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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1893.

No. ~~4~~ 5.

THE PUEBLOS OF ZIA, SANTA ANA, AND JEMEZ,
APPELLANTS,

vs.

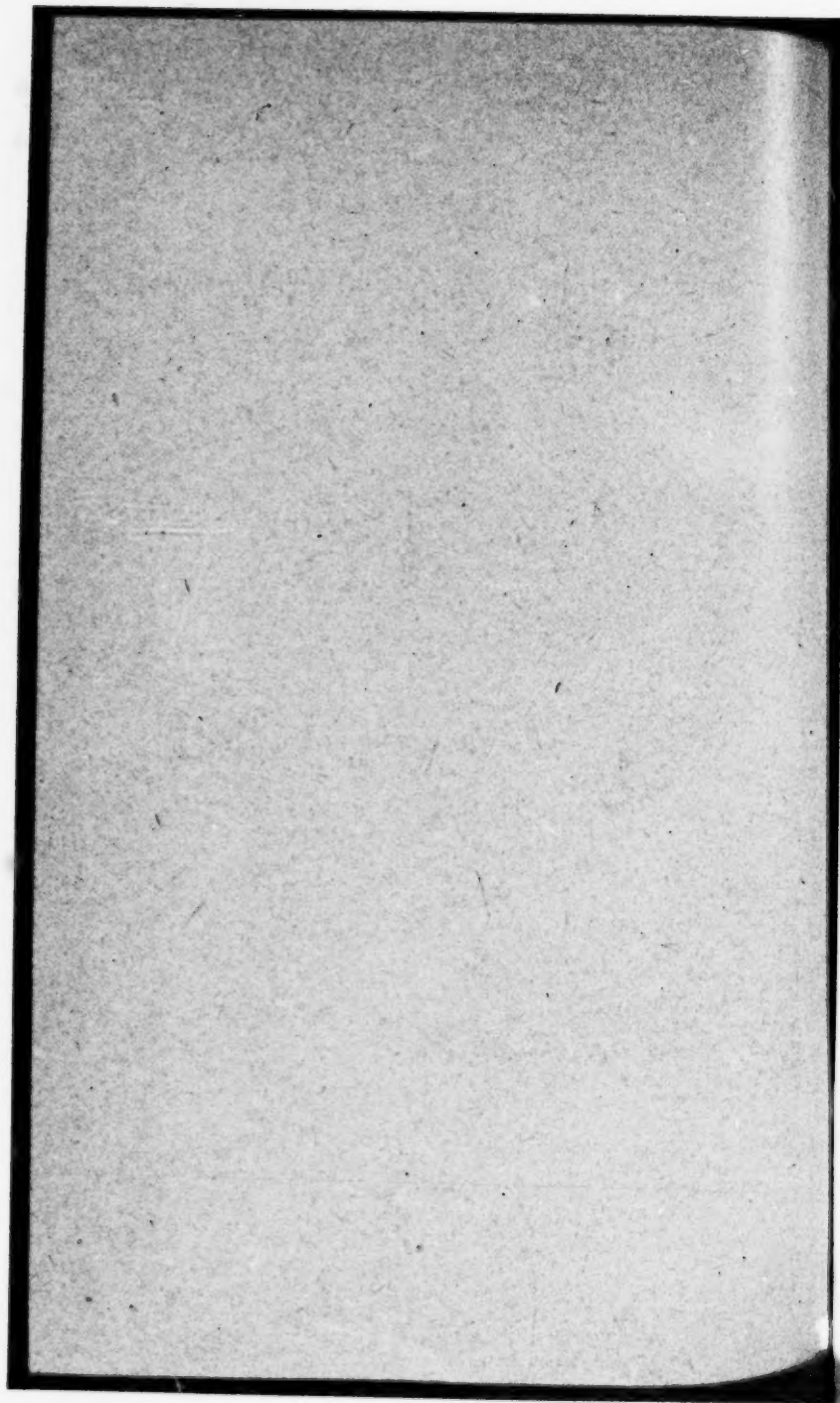
THE UNITED STATES ET AL.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

FILED OCTOBER 7, 1893.

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(15,414.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 41.

THE PUEBLOS OF ZIA, SANTA ANA, AND JEMEZ,
APPELLANTS,

vs.

THE UNITED STATES ET AL.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

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U. S. Court of Private Land Claims.

THE PUEBLOS OF ZIA, SANTA ANA, and JEMEZ, Plaintiffs, }
versus
 THE UNITED STATES OF AMERICA, PEDRO PEREA, JACOB } No. 50.
 Perea, Mariano S. Otero, Charles H. Gildersleeve, and }
 Carlos W. Lewis, Defendants. }

For the confirmation of the Ojo del Espiritu Valley grant.

In the United States Court of Private Land Claims in and
 for the Territory of New Mexico, Sitting at Santa Fé.

THE PUEBLO- OF ZIA, SANTA ANA, and }
 JEMEZ, Plaintiffs, }
vs. } Petition for Confirmation of
 THE UNITED STATES OF AMERICA, } the Ojo del Espiritu Santo
 Pedro Perea, Jacobo Perea, Mariano } Valley Grant. No. 50.
 S. Otero, and Charles H. Gildersleeve }
 and Carlos W. Lewis, Defendants. }

To the honorable the chief justice and associate justices of the
 United States court of private land claims:

Now come the Pueblos of Zia, Santa Ana, and Jemez, by and
 through their counseil, George Hill Howard — Jeffries & Earle, and
 make and file in and before this court this their petition in the
 matter of the Ojo del Espiritu Santo Valley grant, and, respectfully
 informing the court, allege and say:

1. That the Indian Pueblos of Zia, Santa Ana, and Jemez, situ-
 ated in the county of Bernalillo, Territory of New Mexico, the
 above-named petitioners and plaintiffs, by virtue of a title derived
 from the Spanish government that was complete and perfect at the
 date when the United States acquired sovereignty in the Territory
 of New Mexico, are the joint owners in fee of that certain tract of
 land, situate in the county of Bernalillo, Territory of New Mexico,
 bounded and described as follows and as set forth in the aforesaid
 title, to wit:

From north to south Paraje of the Ventana to the Vado de
 Piedra of the Puerco river, the northern boundary of the settlers of
 the place "San Fernando de Nuestra Señora de la Luz;" from east
 to west from the Pueblo of Zia to the eastern banks of the Puerco
 river, the whole of the valley of the Ojo del Espiritu Santo, being
 embraced within the center and within the boundaries of this grant
 and containing, as near as your petitioners can state without a final
 survey, 382,849 acres of land.

2. That about A. D. 1766 the aforesaid Indian pueblos, your
 petitioners, prayed Tomas Velez Cachupin, governor general of the
 then province of New Mexico, of the Kingdom of Spain, that he
 grant them in the name of His Majesty the aforesaid tract, and that

on the 16th day of June, A. D. 1766, the said governor general named and commissioned Bartolome Fernandez, chief alcalde, &c., of the Gueres nation, to examine the said tract and as to the needs of the said petitioners therefor and whether the same conflicted with other rights, &c.; that thereafter, in June, A. D. 1766, the said alcalde, in obedience and in pursuance of the said commission, made his report in the said matter to the said governor general; that thereafter, to wit, on the sixth day of August, A. D. 1766, the said governor general of the said province, in the name of His Majesty, thereunto authorized by virtue of his office, the edicts, laws, ordinances, royal orders and customs then in force and observance in the said province, made and issued unto the said Pueblos of Zia, Santa Ana, and Jemez, your petitioners, in writing, a formal and final grant in fee absolute, coupled with no conditions whatsoever other than that in case of necessity the horses of the royal garrison of Santa Fé might be pastured thereon without let or hindrance upon the part of the said grantees, and in said grant the governor general directed the chief alcalde, Bartolome Fernandez, to give unto the said pueblos the royal possession of the said grant, to place his proceedings on record following the granting decree, to return the same to the said governor general in order that a proper testimonio or official copy thereof might be given to each of said pueblos and the original deposited in the archives of the government, where it should remain.

4. That thereafter, to wit, on the 28th day of September, A. D. 1766, in pursuance of the said grant and the directions therein contained, the said alcalde, with all the formalities and observances of the law and customs then obtaining in the said province, gave juridical and royal possession of the said tract to the said Indian pueblos and made his official written record and certificate thereof.

5. That all of the aforesaid steps and proceedings in the matter of the said grant for the said tract of land from and including the petition, informe, grant, and act of possession *was* joined together and formed the original expediente of title and *was* duly filed in the archives of the government. Official testimonios thereof were at the time made and given to the said pueblos by the said governor general, all whereof is shown and set forth in and by Executive Document No. 206 of the House of Representatives, 43rd Congress, 1st session, which is filed herewith in duplicate as Exhibit A, as containing correct copies of the Spanish language and translation of one of the said official testimonios of the said grant expediente filed in the archives, as hereinbefore set forth, the said official testimonio being without the control of your petitioners and on file in the matter of said grant in the office of the United States surveyor general at Santa Fé, New Mexico, and marked as file or case No. II.

4 Your petitioners also filed the said executive document as a part of their petition and showing as containing a more or less correct sketch map of said tract of land. Your petitioners file the said executive document for the further purpose that the testimony of witnesses now dead therein contained, had, and taken in the matter

of the said grant before the United States surveyor general of the Territory of New Mexico may be availed of by your petitioners upon the trial of this cause in this court, as provided by law.

6. Your petitioners have caused diligent search to be made in the archives of the Spanish government extant in the said United States surveyor general's office for the aforesaid original archive expediente of the said grant, but have been unable to find the same. Wherefore they file the said official testimonio or copy thereof which was made and issued at the said time of the said grant to the Pueblo of Zia and which remained in its possession from that time, as evidence of its title, until it was filed, the same prior to A. D. 1856, in the office of the United States surveyor general, in the matter of the said grant.

That from the said date of the said grant to the said pueblos of the said tract of land they, the said pueblos, your petitioners, have continuously, openly, and notoriously to the present time remained in the actual use and occupation of the same with their herds of horses, cattle, and sheep and cultivating some portions thereof, all under claim of their exclusive right thereto by virtue of the said grant as against the whole world, and they aver that they are now by virtue of the said grant and their said open, continuous, and notorious occupation and use of the same the owners in fee absolute of the said tract and the whole thereof, except that portion of the same which may be in conflict with that certain grant known as and called the Santissima Trinidad Galvana Ignacio Sanchez Vergara tract and in regard to which they have made release unto the claimants thereof, a copy of which said release is filed herewith and marked Exhibit B, the original thereof being filed in the matter of the said Vergara or Galvana tract, pending in this court as cause No. 26.

5 8. That on February 7th, A. D. 1874, James K. Proudfit, then United States surveyor general of the Territory, after all due proceedings, proofs, and examination in the matter of the said grant of the said tract to the said Indian pueblos rendered his decision thereon and reported the said grant to Congress for confirmation (see Exhibit A), but the same has not been finally acted upon by or under the authority of Congress.

9. That thereafter, to wit, October & November, A. D. 1877, the then surveyor general for the said Territory caused a preliminary survey of the said tract to be made, which said survey your petitioners believe and aver to be correct and in accordance with the description and boundaries thereof as set forth in the aforesaid grant to them therefor. The certified copy of the plat or map of the said preliminary survey is filed herewith and marked as Exhibit C.

10. Your petitioners are informed and believe it to be true that certain parties, through the heirs-at-law of Luis Cabeza de Baca, make some claim to a portion of this grant, but the specific nature thereof and upon what claim of title they rest the same your petitioners are not sufficiently advised to show definitely except in this, that Congress has confirmed a grant to the heirs of the said Baca for a tract of land called the Ojo del Espiritu Santo grant, which

was made May 23rd, A. D. 1815, to the said Baca, and which laps upon or conflicts with the grant of your petitioners, which was made, as hereinbefore set forth, September 2, A. D. 1766; that no patent has been made or issued to the said heirs of the said Baca for the said tract so confirmed to them by Congress, as hereinbefore set forth; that defendant Jacobo Perea, as your petitioners are informed and believe, has obtruded upon that portion of the said grant confirmed by Congress to the heirs of said Baca, and that defendants Pedro Perea, Mariano S. Otero, and Charles H. Gildersleeve claim to have an interest of some sort therein under the said confirmation to the heirs of said Baca, and your petitioners aver that the proceedings before the United States surveyor general, wherein the action of Congress was had, were wholly without notice to them, as is required by law, and they allege that the same were therefore irregular and void.

11. And your petitioners further allege that prior to and during the year 1815 A. D. and continuously thereafter your petitioners were in the actual and notorious possession of said grant made to them, as hereinbefore set forth, and that they had no notice
6 of any application or proceedings or of any act of juridical possession of said Luiz Cabeza de Baca under the alleged grant of that date, and that the aforesaid possession of the aforesaid petitioners was well known to the said Baca at the said date of the alleged grant and juridical possession thereof to him, and that for all these reasons the said alleged grant to the said alleged Baca is subject to and void as against the grant of your petitioners.

12. That if, notwithstanding, the grant to your petitioners is a valid, perfect grant prior to and covering the Ojo del Espiritu Santo grant, and if, notwithstanding, the Ojo del Espiritu Santo grant is null for want of notice to your petitioners of the application thereof, and if, notwithstanding, the confirmation of the Ojo del Espiritu Santo grant has been secured upon a report of the surveyor general based upon proceedings irregularly had before him without notice to your petitioners, still your honors shall find that, the same having been confirmed by Congress, you cannot confirm your petitioners' grant for so much thereof as is confirmed by the Espiritu Santo grant. Your petitioners allege that each and every acre of their grant covered by the confirmed Ojo del Espiritu Santo grant is of a real value in excess of one and one-fourth of a dollar.

13. Your petitioners are informed and believe it to be true that defendant Carlos W. Lewis, through the heirs-at-law of Bernardo de M. ra y Pacheco and Pedro Padilla, makes some claim to a portion of this grant by virtue of a grant called Los Alamos, made A. D. 1768, to the said Pacheco and Padilla, a petition for the confirmation of which said grant is now filed in this court as claim No. 38, the same not having been confirmed by Congress; but how much or to what extent, or if at all, this said grant conflicts with that of petitioners they cannot say, for the reason that no correct official survey of this Los Alamos grant has been made, and your petitioners are informed and believe that a correct survey of this Los Alamos grant would not really lap upon or conflict with the bound-

aries of said grant of petitioners set forth hereinbefore; but petitioners aver that should there be such a lap or conflict of boundaries that their grant boundaries should prevail, for the reason of the priority of their grant and for the further reason that they were not according to law and custom cited as colindantes or contiguous proprietors to make objection, if any they had.

7 14. That your petitioners are informed and believe it to be true that Governor Don Fernando Chacon, on the 6th of March, A. D. 1798, made a grant to Jose Miguel Garcia and his associates, known as the town of Cañon de San Diego, which said grant has been confirmed by Congress June 21st, 1860, upon a report made by the surveyor general June 10th, 1859, after hearing had before him, without notice to your petitioners; that it is claimed for this grant that it hath boundaries entirely beyond the limits of the certificate of juridical possession in this, that after laying off the league of the Pueblo of Jemez the chief portion forms a surplus of two thousand one hundred varas, which they (the natives of the Pueblo of Jemez) had before arriving at the Cañon de San Diego, and of this he placed said Garcia and his associates in possession, and of the right of said Garcia and his associates and their representatives to this strip of two thousand and one hundred varas, lying between the Pueblo of Jemez and the Cañon de San Diego, your petitioners made no question; but your petitioners allege that the confirmation of the grant of the town of the Cañon de San Diego must be held to be limited to the area and boundaries as set out in the certificate of juridical possession, as the same was reported to Congress in No. 25 of the private land claims of New Mexico; and they further allege that any survey which fails to conform strictly with said boundaries, as set out in said certificate, acquired no validity from the confirmation, in so far as it exceeds the boundaries designated in said certificate, and that in so far as the survey claimed for the grant of the town of Cañon de San Diego laps upon the grant of your petitioners the same is unconfirmed by Congress and is null and void, and your petitioners are informed that Pedro Perea, Mariano S. Otero, and Charles H. Gildersleeve, with sundry other persons unknown to your petitioners, claim now to own the ground of the town of Cañon de San Diego.

That in so far as your petitioners are aware or have any reason ^{said} to believe that the tract of land claimed by them under their said grant has no mines of gold, of silver, or of quicksilver, or any mineral thereof upon it.

Wherefore your petitioners pray that the validity of the title to the grant of Luis Jaramillo, under and in accordance with the laws, usages, and customs of Spain, the extent and location thereof, and the claim of your petitioners thereto may be enquired into and decided by this court, and that the same may be by your decree established, confirmed, and set apart to your petitioners, as the heirs and legal representatives of the original grantee, in accordance with the metes and bounds set forth in the original

grant document and juridical possession given thereunder; that a survey thereof may be made by the surveyor general of the United States under the direction and instruction of this court; that the petitioners may be granted proper process to bring the defendants into court in accordance with the law, rules, and practice thereof, to make answer hereto, and that they be granted such other and further relief in the premises as in equity and justice the court shall deem meet.

And your petitioners will ever pray, &c.

GEO. HILL HOWARD AND
JEFFRIES AND EARLE,

Counsel for Petitioners.

Filed Nov'r 28, 1892.

9 [Endorsed:] No. 50. In the U. S. court of private land claims. Zia, Santa Ana, & Jemez, plaintiffs, *vs.* United States. Petition. Geo. Hill Howard and Jeffries and Earle, plaintiffs' att'ys.

10 UNITED STATES OF AMERICA, *ss* :

In the Court of Private Land Claims, Santa Fé District, July Term, 1893.

PUEBLOS OF ZIA, SANTA ANA, & JEMEZ	} No. 50.
<i>vs.</i>	
THE UNITED STATES <i>et al.</i>	

Answer.

Comes now The United States, by its attorney, Matt. G. Reynolds, and, for its separate answer to plaintiffs' petition and so much thereof as may be necessary, says:

It denies that said plaintiffs are the joint owners in fee of the tract of land described in the first paragraph of said petition; says it is not true, as alleged in the second paragraph of said petition, that said plaintiffs, in the year 1766, petitioned the governor general of this province to grant them said tract of land.

Says it has no knowledge or information as to whether or not the governor, on the 16th day of June, 1766, or at any other time instructed an alcalde to examine into the needs of these plaintiffs or the propriety of granting them the same.

Says it is not true, as alleged in the third paragraph of said petition, that on the 6th day of August, 1766, or at any other *other* time,

11 under and by virtue of any laws, usages, or customs then enforced and observed in this province, — made or authorized to be made to said plaintiffs grant to said land, as alleged in said petition.

Says it has no knowledge or information sufficient to enable it to form a belief as to whether the plaintiffs or any one of them had in their possession or under their control or ever had what purports to be testimonio or an official copy of said alleged grant.

It denies that any record exists or ever existed of the same, and says that this country was transferred to the United States by its predecessor without any record, notice, or evidence of the existence of the same.

It denies that the plaintiffs were placed in juridical possession of said property by any one authorized thereto on the 28th day of September, 1766, or that there was ever any written record thereof made as alleged.

Says it is not true that said plaintiffs were placed, in September, 1766, in possession of the property sued for, and that they have ever since been in the actual use and occupation of the same.

Further answering, the defendant says that whatever rights in and to said property the plaintiffs may have ever had was purely a permissive right or license, subject to a revocation by the authorities at any time or subject to be forfeited by abandonment or non-user, and whatever use and occupation they may have had of any part thereof was for pasture grounds and for no other purpose, and that the same had been abandoned as such long prior to the acquisition of this country by the United States, and at said time

12 said license had been forfeited by non-user, and the same had not for many years prior to the acquisition of this country been of any use or benefit to these plaintiffs.

Further answering, it says that long prior to the acquisition by the Republic of Mexico said license had been abandoned and the same appropriated by the Spanish government; that several years prior to Spain relinquishing dominion over this province, to wit, in the year 1815, it granted a portion of said land to one Luis Cabeza de Baca, which said grant was recognized by the Republic of Mexico, recognized by the United States, and finally confirmed and patented by the United States to the heirs of said Baca.

The rights, if any, these plaintiffs may have had in and by said alleged grant of 17th were ignored, denounced, and forfeited by said grant of 1815 to said Baca, and the exercise of dominion and ownership over the same or various portions thereof occurred at various times subsequent to said alleged grant in 1766.

Further answering, it says that the only authority under the law the officials of said province had to grant land to Indians was in the form of a settlement or pueblo; that it was the policy of the Spanish government to consolidate and to draw into communities all of its Indian subjects, and the authorities were limited to four leagues in making said grants.

That in obedience to said policy, law, usage, and custom the officials of New Spain, and particularly of this province, in no case granted to Indians more than four leagues, and in obedience to said custom, law, and usage each of the plaintiffs applied to this Government for a confirmation of its pueblo and received a patent

13 therefor, at said time making no claim for the land now sued for.

Further answering, defendant says said claim is not one which, under the law of nations, the treaty of cession, or equity, in good conscience this Government is bound to recognize and respect.

All allegations not hereinbefore answered are denied, and it is demanded that plaintiffs be put to their proof of all the allegations in said petition, as provided they shall be by the act of Congress approved March 3, 1891, under which this court assumes jurisdiction of this controversy, and that they be put to their proof as to their pretended interest in said alleged grant.

Now, having fully answered, it prays the court that a decree may be entered rejecting the claim for said alleged grant and dismissing the petition, and for such other orders as to the court may seem mete and proper and which it may be authorized to make in the premises.

Respectfully submitted.

(Signed)

MATT. G. REYNOLDS,

U. S. Attorney.

Filed June 26th, 1893.

14 [Endorsed:] (Copy.) Case No. 50, file No. —. Pueblos of Zia, Santa Ana, and Jemez, plaintiffs, *vs.* The United States, defendant. Zia, Santa Ana, and Jemez grant. Answer. Matt. G. Reynolds, U. S. attorney.

15 In the Court of Private Land Claims, Territory of New Mexico.

THE PUEBLOS OF ZIA, SANTA ANA, and JEMEZ }
vs.
 THE UNITED STATES *et al.* }

The joint and several answer of Pedro Perea, Jacobo Perea, and Mariano S. Otero, defendants, to the petition of The Pueblos of Zia, Santa Ana, and Jemez.

The defendants Pedro Perea, Jacobo Perea, and Mariano S. Otero, saving and reserving unto themselves all and all manner of benefit of exception to the many errors and insufficiencies in said petition contained, for answer thereto or to so much and such part thereof as they may deem necessary and essential to answer, answering, say:

They deny that there is any such body or person known as the Pueblo of Zia, Santa Ana, or Jemez, or that any such body, either jointly or separately, exists or has any right to exist in proceedings for the confirmation of any grant title whatever; that any such body is or was authorized, empowered, or entitled to hold, take, possess, or enjoy said real estate, either under the laws of the Kingdom of Spain, Mexico, or the United States.

They deny that such Indians can sue or bring suit by virtue of their designation as Indians of the Pueblo of Zia, Santa Ana, or Jemez or all of them combined.

They deny that by virtue of any title derived from the Spanish government, either perfect or imperfect, the said alleged petitioners are owners, in fee or otherwise, of the tract of land described in said petition.

They deny that the said alleged grant is a perfect or complete grant in any sense of the word, and that any such grant or title was ever made or granted, and deny that there was ever any record of the same, and allege the fact to be that the said Indian pueblos long since acquired title by means of confirmation to all of the lands which were ever granted or given to them.

They deny that in 1776 the said Indian pueblos prayed the governor general of New Mexico to grant them the tract, as set out in the petition aforesaid, or that said governor general commissioned any one to examine the tract as to the needs of the petitioners therefor or in any other respect, as set out in said petition, 16 or that, in obedience to any such commission, any alcalde made any report in said matter to said governor general.

They deny that the governor general, as stated in said petition, in the name of His Majesty or otherwise, by virtue of his office or the edicts, laws, ordinances, rules, orders, or customs then in force and observance in New Mexico, made or issued to said Indian pueblos or either of them, in writing or otherwise, any formal or final grant in fee, absolute or otherwise, with or under any conditions as stated in said petition, or that said governor directed said Bartolome Fernandez to give possession of said tract to said pueblos or to place on record any proceedings of so doing or to return the same to the governor general, in order that any testimonio or official copy thereof might be given to either of said pueblos or that the same might be deposited in the archives of the Government, where it should remain; and they allege the fact to be that there never was any record made in the archives of said Government of any such grant; that there was never any return made by any alcalde of any possession given to said grant, nor was there any original paper or papers referring to the same deposited in the archives of the Government.

They deny that thereafter, in pursuance of said alleged grant and the directions therein contained, any such alcalde in any manner gave any possession of said tract of land to said Indian pueblos or either of them or made any official or written record or certificate thereof.

They deny that all the steps and proceedings, as alleged in said petition, for the grant of said tract of land, including the petition, informe, grant, or act of juridical possession, *was* joined together and formed the original expediente of title or *was* duly filed in the archives of the Government, or that official testimonios thereof were at that or any other time made and given to said pueblos by said governor general, as set out in said petition; and these defendants further say that not having been furnished with a copy of Exhibit A mentioned in said petition they are unable to state what may have been in the same; but they deny that said Exhibit A contains a copy of any legal or valid grant to said pueblos, and they also deny that said executive document referred to contains any copy of any legal or valid grant of land which was ever granted or authorized to be granted.

They deny that the copy filed with said petition, claimed to be a

copy of the official testimonio of any grant, is a copy of such testimonio issued to any pueblo whatever, or that the same
17 remained in the possession of the Pueblo of Zia from that time as evidence of such title; and they deny that any testimonio whatever was ever filed in the surveyor general's office prior to the year 1856 in the matter of said alleged grant.

They deny that said pueblos have continuously, openly, and notoriously to the present time remained in the actual use and occupation of said lands with their herds of horses, cattle, or sheep, or that they have cultivated any portions thereof through or under claim of right thereto or by virtue of said alleged grant or otherwise as against any one, but, on the contrary, that they state the fact to be that for all that portion of said tract of land which conflicts with the Ojo del Espiritu Santo grant or tract the owners of the said last-mentioned tract have ever held open, notorious, and uninterrupted possession thereof, claimed by the owners of the same under and by virtue of the grant made to Luis Maria Baca by the governor general of New Mexico, subsequent to the date mentioned in said petition, before the grant to said pueblos.

They deny that the alleged survey caused to be made by the surveyor general for the Territory of New Mexico for said alleged grant of land is correct and in accordance with the description and boundaries of the said alleged grant; they admit that they, through the heirs of Luis Maria Cavesa de Baca, make claim to all that portion of said alleged grant of land which lies within the boundaries of the said grant made to Luis Maria Cavesa de Baca and known and called by the name of the Ojo del Espiritu Santo grant; they admit that Congress has confirmed said last-mentioned grant, which was made at the time specified in said petition, and that the same laps over and conflicts with the lands alleged and pretended to be included in said alleged grant of said petitioners; they admit that no patent has been issued to the heirs of Baca for said tract, but the same has been duly surveyed and segregated from the public domain; these defendants deny that said Jacobo Perea has obtruded upon any portion of the said grant confirmed by Congress to the heirs of Baca, but admit that he is an owner of a portion of said grant and has a legal right to enter upon a portion of it, and that said Pedro Perea and Mariano S. Otero are also owners of a portion of said grant or claim and have an interest therein under said confirmation to the heirs of said Baca.

They deny that the proceedings before the United States
18 surveyor general, wherein the action of Congress was had in said grant to Baca, were without notice to the said petitioners, or that any such notice was required by the law, but they state the fact to be that said grant to Baca was approved by the surveyor general and confirmed by Congress, in accordance with the provisions of law, in an open and notorious manner; and these defendants state that they acquired their interest in the same from one Jose Leandro Perea, who, for the consideration of more than six thousand dollars in cash, purchased a portion of the interests of the heirs of Luis Maria Cavesa de Baca, which last-named person had

long held it prior to the purchase by said Perea from his heirs of said interests, and that said heirs of said Baca made conveyance to said Jose Leandro Perea for a good — a valid consideration for all their interests, said Jose Leandro Perea thereby becoming a *bona fide* purchaser of such interests without any notice whatever of any claim of petitioners; that at the time said Perea purchased said portions of interests there was no record or files on the record of the claim of the said petitioners and nothing which gave said Jose Leandro Perea any notice of the claim of the said petitioners; that at that time said petitioners had not made application to the surveyor general for the approval of their grant, or that the same should be remitted to Congress for action, but as to each one of the said three pueblos other grants, to the extent of four square leagues, had been petitioned for by them and confirmed to them by the Congress of the United States, and patents to them therefor had been issued.

They deny that prior to the year 1815 or continuously thereafter said petitioners were in the actual or notorious possession of said land alleged to be granted to them, or that they had no notice of the application or of the proceedings or of any act of juridical possession to the said Luis Maria Cavesa de Baca under the said grant to him, but, on the contrary, state that the act of juridical possession was open, notorious, and that the occupation of said tract of land thereafter by the said Baca and his employés was open, notorious, and continuous from the date of the said grant, in the year 1815, up to the present time.

They deny that the possession of the alleged petitioners of the said alleged parcel of land was ever known to the said Baca at the time of the grant to said Baca or at the time juridical possession thereof was given them, but state the fact to be that said

19 Baca was given possession of the said grant under a good and valid grant from the government of Spain, and that he was placed in possession thereof by an officer of the government of Spain to the full extent of the boundaries mentioned therein, and that never until the said petitioners filed their claim with the surveyor general about ten years since has there been any pretence that the said Baca or his said heirs and assigns were not entitled to the full, free, uninterrupted, and undisputed possession and ownership of the whole of said tract of land included in said grant to said Baca.

These defendants are unable at present to furnish a copy of said grant, but state that the same is a portion of the public archives in the surveyor general's office, and they pray that the same may be examined as to any evidence in this case, together with all other papers appertaining to said grant and filed in said surveyor general's office.

They therefore pray that the said petition of plaintiffs may not be granted, especially in respect to that part thereof which may conflict with the grant made to said Baca.

(Signed)

T. B. CATRON,

Filed January 10, 1893.

Att'ys for Def'ts.

20 [Endorsed:] 111. In the court of private land claims of the Territory of New Mexico. The Pueblos of Zia, Santa Ana, and Jemez *vs.* The United States *et al.* Copy of the joint and several answer of Pedro Perea, Jacobo Perea, and Mariano S. Otero, defendants. Filed — —. — — —, for U. S. att'y.

21 In the United States Court of Private Land Claims.

PUEBLOS OF ZIA, SANTA ANA, AND JEMEZ	} No. 50.
<i>v.</i>	
THE UNITED STATES <i>et al.</i>	

Replication.

These repliants, saving and reserving unto themselves all and all manner of advantages and exceptions to the manifold insufficiencies of said answer and the pleas in it contained, for replication thereunto say that they will prove their petition to be true, certain, and sufficient in law to be answered unto, and that said answer of defendants and said pleas in it contained are uncertain, untrue, and insufficient in this, to wit:

That, whilst their need of more pasture may have been or was a reason for making this grant, it is not true that their right to said property "was a permissive right or license or was subject to revocation," and they expressly deny that any attempt to revoke the same or any abandonment thereof was ever made, and these repliants deny that in the year 1815 Spain made a grant of this land to Luis Cabeza de Baca, and they say that if the same has been confirmed and patented by the United States it is but one of many instances in which, through error, mistake, and fraud, patents have been secured for junior grants against the lawful rights of senior grantees under complete and perfect grants, and, as the con-

22 firmation by the United States is only a quitclaim on the part of the United States, such junior grant or any action thereon is not a defence whereof the United States can now avail itself; that the sole and only defence which the United States can make under the laws and treaties of the United States is as to the legal validity of the repliants' grant and of their right to its confirmation, and they allege and aver, to their great regret, that this court is without jurisdiction to pass upon the relative merits of conflicting grants, and is therefore without jurisdiction to pass upon a defence by the United States resting solely upon such alleged conflict.

These repliants say it is untrue that said grant was ever denounced; that it is not true they made no claim for the confirmation of their grant, but, on the contrary, they allege and aver that they duly presented the same to the surveyor general under the provisions of the act of July 22, 1854.

And these repliants say that the whole of said answer is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in said answer contained material or effectual in law to be replied unto,

confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and by their said petition they have already prayed.

Filed July 21, 1893.

GEO. HILL HOWARD,
JEFFRIES AND EARLE,
Attorneys for Repliants.

[Endorsed:] Zia, Santa Ana, &c. Replication.

23 In the United States Court of Private Land Claims in and for the Territory of New Mexico, Sitting at Santa Fé.

THE PUEBLOS OF ZIA, SANTA ANA, and JEMEZ, Plaintiffs,	}
<i>versus</i>	
THE UNITED STATES OF AMERICA, PEDRO PEREA, <i>et al.</i> , Defendants.	}

Now come the said plaintiffs for the purpose of correcting a clerical error in the prayer of their petition hitherto filed in the matter of the Ojo Espiritu Santo Valley grant, cause No. 50, and amend the prayer of the same by striking out the words "Luis Jaramilla" on the second line of the said prayer and inserting instead thereof the words "the Ojo Espiritu Santo Valley grant," and the said plaintiffs, the respectful petitioners in the said cause, pray the court that the said amendment be allowed without prejudice to them upon account of the said clerical error; and they humbly pray, &c.

GEO. HILL HOWARD,
JEFFRIES AND EARLE,
Counsel for Petitioners.

Filed January 15th, 1892.

24 [Endorsed:] In United States court of private land claims. No. 50, file 11. The Pueblos of Zia, Santa Ana, and Jemez, plaintiff, *vs.* The United States of America *et al.*, def'ts. Amendment to prayer of petitioners. Filed January 15, '92. James H. Reeder, cl'k, by Ireneo L. Chaves, d'p'ty. Geo. Hill Howard, Jeffries and Earle, counsel for petitioners.

25 UNITED STATES OF AMERICA, 88:

In the Court of Private Land Claims, Sitting in the Territory of New Mexico, at the City of Santa Fé.

PUEBLOS OF ZIA, SANTA ANA, and JEMEZ	}	No. 50.
<i>vs.</i>		
THE UNITED STATES <i>et al.</i>		

Comes now the Atlantic and Pacific Railroad Company, upon leave first had and granted to intervene in the above-entitled cause, and for its answer shows—

That it is — corporation duly incorporated under an act of Congress approved July 27th, 1866.

That on or about the 12th day of March, 1872, it duly and legally filed with the Commissioner of the General Land Office of the United States a map of definite location of its line of road, and thereafter, in the year 1881, it constructed its line of railroad through the counties of Bernalillo and Valencia, in the Territory of New Mexico.

That by the said act of Congress creating said co-poration it was granted *that* the odd-numbered sections of public land in the Territory of New Mexico within a distance of forty miles on each side of the line of railroad constructed by it, together with a strip of land 200 feet in width, as and for its right of way, and also an indemnity strip of 10 miles adjoining said forty miles, and that the land the title to which plaintiffs seek by this action to have confirmed lies within said fifty-miles limit.

That at the time of filing its map of definite location as aforesaid no proceedings were had anywhere or in any way preventing
 26 the rights granted to this defendant by said act of Congress from attaching to any of the real estate (to which they could attach under the terms of its said grant) described by plaintiffs' petition.

That by virtue of the facts aforesaid said company became seized of the title to the odd-numbered sections embraced within the limits of the land described in said petition and which it is unable at this time more particularly to describe.

Therefore this defendant prays that the plaintiffs' petition be dismissed as to all of the odd-numbered sections above mentioned.

C. A. STERRY,

Attorney for Atlantic & Pacific Railroad Co.

(Here follows map marked p. 27.)

28

(TRANSLATION OF MUNIMENTS.)

Testimonio.—Corrected.

His excellency the governor and captain general :

I, Felipe Tafoya, lawyer of this town of Santa Fé, appear before your excellency in full legal form, for and in the name of Cristoval, Indian governor of the Pueblo of Zia, and Thomas, chief war captain of said pueblo, who come under appointment from their casique, and of the other inhabitants of their Republic, and, sir, in the name of the aforementioned, and of the community of the Pueblos of Santa Aña and of Jemez, do state that they, from their foundation, have considered as their pasture ground, in the vicinity of their said pueblos, a valley commonly called the Holy Ghost Spring, and that in some urgent cases, the same as is known, is used as a pasture ground for the horses of this royal garrison, and the said parties being aware that the said valley has had, in its vicinity, some applicants to acquire the same by grant, which will cause them very great injury, as they have considerable cattle, sheep, goats, and horses for the royal service, and not having any other place in which to

pasture them, particularly the people of the Pueblo of Zia, the greater part of whose fields are upland, and some of them in the glens of said valley, adjoining their said pueblo. In consideration of all of which, I ask and pray that your excellency, in the name of His Majesty, (whom may God preserve,) be pleased to declare said valley to be the legitimate pasture grounds and pastures of the pueblos, directing that the boundaries thereof be designated to them, that is, on the east, the pueblos aforesaid, on the west, the summits of the Puerco river, on the north, a place called the Ventana, where some Navajo Apaches reside, and on the south, the lands of the citizen settlers of said Puerco river, and, should your excellency order to be done as I have requested, the said parties, my clients, will receive grace with the justice which I ask, and declare in their name that this is not in dissimulation, and so forth.

FELIPE TAFOYA.

Decree.

TOWN OF SANTA FÉ, June 16, 1766.

Having seen the petition of the Republics of the three Pueblos of Zia, Santa Aña, and Jemez, of the Queres nation, all contiguous to the banks of the Santa Aña river, I do, in order to decide in justice, commission the chief alcalde of said pueblos, Bartolomé Fernandez, to the end that, having examined the boundaries which they mentioned as of the Holy Ghost Spring, where they state they pasture their stock and horses, he reports to me the leagues the same may embrace from north to south and from east to west, and whether the aforesaid three pueblos have the cattle, sheep, goats, and horses proportional to the boundaries asked for for their grazing, and also whether or not any citizen or citizens are damaged by said boundaries under any prior valid grant and possession held by them, which the said chief alcalde will perform with all possible veracity.

And I, Thomas Velez Cachupin, governor general of this kingdom, have so provided, ordered, and signed, with my two attending witnesses, in the absence of notaries, there being none in this government.

VELEZ CACHUPIN.

Witness: CARLOS FERNANDEZ.

Witness: JOSÉ MALDONADO.

Report.

In compliance with the order of his excellency Thomas Velez Cachupin, governor and captain general of this kingdom, in his foregoing decree of the sixteenth of June instant, I, Bartolomé Fernandez, chief alcalde and war captain of the pueblos of the Queres nation, proceeded to examine the lands asked for by the three
 29 Pueblos of Jemez, Zia and Santa Aña, and the boundaries which they mention in their petition, and I find that they contain, from north to south, that is, from the stone ford, which is the boundary of the citizen settlers of the Puerco river, to the

Vintana, about eight leagues, somewhat more or less, and from east to west, that is, from the Pueblo of Zia, which is nearest to the lands asked for to the Puerco river, about six leagues, somewhat more or less, in which distance I know of no lands suitable for cultivation, the watering places being scanty and few, and they are only suitable for pasturing live stock, which is abundant at said pueblos, though the said three Republics have no other lands on which to sustain their stock, and it being, as it is true, that none of the aforementioned boundaries will injure any one holding or to hold possession of lands within the same, which proceedings I placed on record, signing the same with two attending witnesses, in the absence of notaries, there being none of any kind in this kingdom, town of Santa Fé, June, one thousand seven hundred and sixty-six.

BARTOLOMÉ FERNANDEZ.

Witness: JUAN MARIA ANTONIO RIVERA.

Witness: PEDRO PADILLA.

Granting Decree.

In the town of Santa Fé, on the sixth day of the month of August, one thousand seven hundred and sixty-six, I, Thomas Velez Cachupin, governor general of this Kingdom of New Mexico, in view of what is petitioned for by the three Pueblos of Santa Aña, Zia, and Jemez, of the Queres nation, and of the report which their chief alcalde, Bartolomé Fernandez, makes, that they have held said lands for their live stock, which at present is abundant, without having any other places in which to pasture them, except those referred to in their petition, together with the small watering places mentioned in said report, declared that I would grant, and I did grant, in the name of His Majesty (God preserve him,) the aforesaid lands for pasturing the stock and horses of the aforesaid three Pueblos of Santa Aña, Zia, and Jemez, with the boundaries, from north to south, from the place Ventana to the stone ford of the Puerco river, the boundaries also of the citizens of the place San Fernando of Nuestra Señora de la Luz; and from east to west, from the Pueblo of Zia to the said Puerco river, the eastern edge, the whole of the valley of the Holy Ghost Spring being embraced within the center and within the boundaries of this grant, with the condition and stipulation: that in case of necessity the horses of this royal garrison of Santa Fé may, and shall be, kept in said valley, the same being a place where they have been accustomed to graze; wherefore the aforementioned three pueblos are to place no obstacle in the way, nor claim damage therefor; and the aforementioned boundaries being for the future considered those of the aforementioned three pueblos, they will hold the same with legitimate title under this royal grant, so that they be not molested by any Spanish citizen or citizens, taking their stock thereupon, deeming the pasturage to be common. And I direct the chief alcalde, Bartolomé Fernandez, to go and give to the aforementioned three pueblos royal possession of this grant, and the boundaries therein

set forth, taking with him the justices and seniors of each one of them, and placing his proceedings on record, following this my granting decree, which he will return to me, in order to furnish to each pueblo the proper testimonio of the whole, and deposit the original in the archives of this government, where it shall remain.

30 And I so provided, granted, ordered, and signed, acting with two attending witnesses in the absence of notaries, there being none of any kind in this jurisdiction.

THOMAS VELEZ CACHUPIN.

Witness: CARLOS FERNANDEZ.

Witness: DOMINGO SABADIA.

Possession.

In compliance with the directions of his excellency Thomas Velez Cachupin, governor and captain general of this kingdom of New Mexico, I, Bartolomé Fernandez, chief alcalde and war captain of the pueblos of the Queres nation, proceeded to the aforementioned pueblos, and, in company with the governors, casiques, and other authorities of the Pueblos of Santa Aña, Zia, and Jemez, proceeded to the lands asked for by the natives of the said three republics mentioned by his excellency the governor aforesaid, in the name of his majesty, as appears by the foregoing grant, and, summoning the contiguous land-holders, who are the residents of the place San Fernando, of the Puerco river, and the lieutenants Juan Bautista Montañó, Agustin Gallego, and Tomas Gurule, being present, I took by the hand the aforesaid governors, who are Cristoval Naspona, and Cristoval Chiguigui, Pedro Chite; Casiques Sebastian, Lazaro, Juan Antonio; War Captains Agustin, Tomas, Juan Domingo, and the other magistrates, and conducted them over said land, and they shouted long life to the king our sovereign, whom may God preserve, and they cast stones, and pulled up grass, in sign of possession, which I gave them, and which they received quietly and peaceably, without any opposition whatever, under the conditions mentioned in the aforesaid grant, and with the boundaries therein set forth, which are from north to south from the Ventana to the stone ford, and from east to west from the Pueblo of Zia to the eastern edge of the Puerco river. And that it may so appear, I, the aforesaid chief alcalde, signed this, with two attending witnesses, acting as special justice, in the absence of notaries, there being none in this jurisdiction, at this place, the Spring of the Holy Ghost, on the twenty-eighth day of September, in the year one thousand seven hundred and sixty-six. I certify.

BARTOLOMÉ FERNANDEZ.

Witness: MIGUEL TENORIO DE ALBA.

Witness: PEDRO GARCIA.

It agrees with the original on file in the archives of this government, from whence, I, Thomas Velez Cachupin, governor general

of this kingdom of New Mexico, ordered the same to be copied. It is true and corrected, and there were present my attending witnesses, with whom I act in the absence of notaries, there being none in this jurisdiction. In testimony of truth.

THOMAS VELEZ CACHUPIN.

Witness: CARLOS FERNANDEZ.

Witness: DOMINGO LABADIA.

The foregoing translation, made by me, is a correct rendering from the original in Spanish, to the best of my knowledge and belief.

SAM'L ELLISON.

Sworn to and subscribed before me this July 25, 1873.

JAMES K. PROUDFIT,

Surveyor General.

31

SURVEYOR GENERAL'S OFFICE,
TRANSLATOR'S DEPARTMENT, SANTA FÉ,
NEW MEXICO, July 25, 1873.

The foregoing translation having been by me compared with its original in Spanish, and found correct, is hereby adopted as the official translation.

DAV. J. MILLER, *Translator.*

Testimony of Witnesses.

Zia, Santa Aña, and Jemez Pueblos.

JUAN CASADOS having been summoned by and before the surveyor general to testify in this claim of said pueblos for land, and being present, and duly sworn by the surveyor general, on his oath declares:

Question by SAMUEL ELLISON, as attorney for claimants: What is your name, age, residence, and occupation?

Answer. My name is Juan Casados. My age is sixty-seven years. My residence is at the Cañon de Jemez; and my occupation is laborer and shepherd. I was born in the Cañon de Jemez, and have always lived there.

Question. Are you acquainted with the Espíritu Santo grant of land; and if so, please state its locality, and who are the reputed owners of the same.

Answer. I know a tract of land so called, situated in the county the Pueblo of Jemez is in, and east of the Puerco river, and west of the Jemez mountain. The land, I understand, was granted by the king for pastoral purposes to the Pueblos of Zia, Santa Aña, and Jemez, and neighboring white people of San Ysidro and other adjacent settlements. I have not seen the grant, and cannot read, but have always understood this to be the case. The natives of the three pueblos named have always had live stock grazing upon this tract of the Espíritu Santo, except during hostilities with the Navajo Indians, when the stock was removed to places of greater safety.

Question. How far do you reside from the spring of the Espiritu Santo?

Answer. About five or six leagues; but not upon the tract, which is beyond the mountain from where I reside.

Question. Do you know the boundaries of the tract in question? And if so, state them; and also state how you know them.

Answer. I know the boundaries, as I have always heard them mentioned by old persons of the vicinity, and I have thus always understood them to be from the Ventana, on the north, to the Vadito de Piedra, on the south, and from the pueblos on the east, to the Puerco river on the west.

Question by the surveyor general: Have you ever heard that the land in question, or any part of it, was claimed or occupied by any other claimant?

Answer. I have never heard of any such claimant. One Diego Baca has resided at the spring for the last three or four years, and has been cultivating land and has some live stock there, but under what right he occupies I do not know.

Question. Do you know of any mines or minerals or coal upon this tract of land?

Answer. I have never seen anything of the kind.

32 Question. Have you any, or have your ancestors had any, interest in this land of the Espiritu Santo?

Answer. I have no other interest, and I believe my ancestors had no other interest in it, than the right to pasture our animals upon the tract.

his
JUAN x CASADOS.
mark.

Sworn to and subscribed before me, this July 25, 1873.

JAMES K. PROUDFIT,
Surveyor General.

JOSE RUMOLDO CASADOS, having been summoned as aforesaid, and being also present, and duly sworn by the surveyor general, on his oath declares:

Question by Mr. ELLISON. What is your name, age, occupation, and residence?

Answer. My name is José Rumoldo Casados; my age is 63 years; my occupation is laborer and shepherd, and my residence is Cañon de Jemez, where I have resided all my life. I am a brother of Juan Casados, the witness who has just testified.

Question. Are you acquainted with the tract of land known as the Espiritu Santo grant, in Santa Aña county? If so, please state what you know about it.

Answer. I know such a tract there, bounded on the north by the high mesa of the Ventana, and on the south by the Vadito de la Piedra, on the Puerco river, where the Ceballeta and Jemez road crosses, and on the west, as I have been informed, by the Puerco river, and on the east by the top of the Jemez mountain. The re-

puted owners of the tract are the three Pueblos of Zia, Santa Aña, and Jemez. The only party now in possession of the land, so far as I know, is one Diego Baca, who has been for the last three years residing with his family at the spring of Espiritu Santo upon the tract, at which place he has a ranch and live stock, and has cultivated land. I do not know under what right he occupies the place. The Indians of the three pueblos named have always pastured their stock upon the tract, except when the Navajo Indians were at war, and are now pasturing stock upon the land. I do not know of any adverse claim for the land. I do not know of any mines, or minerals, or coal upon the land. I have no interest whatever in this claim for the land in question.

his
 JOSÉ R. x CASADOS.
 mark.

Sworn to and subscribed before me this July 25, 1873.

JAMES K. PROUDFIT,
Surveyor General.

Decision of Claim.

Opinion of surveyor general.

This claim for land is brought before me in behalf of the Indian inhabitants of the Pueblos of Zia, Santa Aña, and Jemez, under the eighth article of the treaty of Guadalupe Hidalgo and the act of Congress approved July 22, 1854, establishing this office.

It appears from the record in this case that the pueblos named, by proper authorities and agent, applied to Don Tomas Velez Cachupin for a grant of land, (petition without date;) that 33 said Cachupin, then being governor and captain general of the province of New Mexico, at that time one of the colonial possessions of the Spanish Crown, did, on the sixteenth day of June, 1766, order and appoint one Bartolomé Fernandez, chief alcalde of the said pueblos, to investigate and report to him as to the propriety of making the grant; that in said month of June, 1766, said alcalde examined the matter, and reported that there was no objection to making the concession; that on the 6th day of August, 1766, Governor Cachupin made the grant, reserving only the privilege of pasturing on the lands the horses of the royal garrison of Santa Fé; that he ordered said Alcalde Fernandez to place the people of said Pueblos of Zia, Santa Aña, and Jemez, in juridical possession of the land, and that said alcalde did so, as appears from his report of September 28, 1766.

From the language of the granting decree of Governor Cachupin, it is evident that he intended to extend the boundaries of the pueblo lands so as to include the grant now under examination. The grants of the original pueblo lands were made in 1689, and have been confirmed by Congress. A translation of the papers in this case was made in this office, probably in 1856, but for some reason, probably, as I am informed, on account of some fear or disagree-

ment among the Indians, it was withdrawn and not prosecuted, and but for this reason no doubt these lands would have been confirmed when the others were.

I am of opinion that the Indians show an absolute grant and full possession under it, and that Congress ought to confirm the same, which I respectfully recommend.

I transmit triplicate copies of the record.

JAMES K. PROUDFIT,

United States Surveyor General.

United States surveyor general's office, Santa Fé, N. Mex., February 2, 1874.

Authentication of Transcript.

SURVEYOR GENERAL'S OFFICE.

SANTA FÉ, N. MEX., *February 25, 1874.*

The foregoing is a correct transcript of the papers on file in this office constituting Indian pueblo claim T, in the name of the Pueblos of Zia, Santa Aña, and Jemez.

JAMES K. PROUDFIT,

United States Surveyor General.

34

JULY 21ST, 1893.

The above-entitled cause was set for trial on August 3rd, 1893.

AUGUST 3RD, 1893.

Come now the plaintiffs in the above-entitled cause, in person and by their attorneys, Geo. Hill Howard, Esq., Jeffries and Earle, Esqs., and the defendant by Matt. G. Reynolds, Esq., United States attorney, and T. B. Catron appearing for Jacobo Perea, Pedro Perea, and Mariano S. Otero, defendants to the petition of the Pueblos of Zia, Santa Ana, and Jemez.

This cause coming on for trial on the petition of the plaintiffs and the several answers filed herein, documentary and oral proof was presented and examined.

AUGUST 4TH, 1893.

The above-entitled cause coming on to be further heard, there appeared the United States attorney, Matt. G. Reynolds, Esq., for and on behalf of the defendant, and Geo. Hill Howard and Messrs. Jeffries and Earle for and on behalf of the petitioners in the cause.

Further oral and documentary proof was introduced ; after which the court took a recess until two o'clock p. m.

The court again in session at two o'clock p. m.

The above-entitled cause coming on to be further heard, there appeared all the attorneys in the cause.

Further oral and documentary proof was introduced ; after which the court suspended further action herein until tomorrow.

AUGUST 5TH, 1893.

The above-entitled cause having come on to be further heard, there appeared the United States attorney and the attorneys for plaintiffs.

Further oral and documentary proof was introduced in the cause.

35

AUGUST 7TH, 1893.

The above-entitled cause coming on to be further heard, there appeared the United States attorney and the attorneys for plaintiffs.

Further proof in the cause was introduced.

AUGUST 8TH, 1893.

The above-entitled cause coming on to be further heard, there appeared the United States attorney and the counsel for plaintiffs.

After full arguments by counsel the cause was submitted to the court, and the court, not being sufficiently advised in the premises, took this cause under advisement.

AUGUST 10TH, 1893.

Come now the petitioners in the above-entitled cause, by their attorneys, Messrs. Geo. Hill Howard, Jeffries and Earle, and the defendants by Matt. G. Reynolds, Esq., United States attorney, T. B. Catron, Esq., appearing for Pedro Perea, Jacobo Perea, and M. S. Otero; and the cause having been submitted at a former day of the court, and the court being fully advised in the premises, it is considered by the court the grant rejected, and that the petition of the petitioners in the cause be, and the same is hereby, dismissed, the grant not being in fee, but a license to pasture.

And it is so ordered.

AUGUST 18TH, 1893.

Now come the petitioners, by their attorneys of record, and pray that an appeal be allowed them from the decree herein dismissing their petition.

August 21st, 1893.

GEO. HILL HOWARD,
JEFFRIES AND EARLE,
Attorneys for Petitioners.

Appeal allowed.

JOSEPH R. REED,
Chief Justice.

36

Office of Thomas B. Catron, attorney-at-law.

SANTA FE, N. M., Oct. 8, 1873.

Gen'l Proudfit.

DEAR SIR: I have just this minute been informed that you have promised Don Tomas C. de Baca or some others that if they, Bacas, sell the grant of "Ojo Espiritu Santo" that you will reject the grant of the 3 Indian pueblos. I have advised the Indians in this matter, and because they are wards of the Government I have advised them

what course to pursue, knowing all the grant conflicts with the Bacas' "Ojo Espiritu Santo."

Mr. Tom Baca is the author for your promise to do this. I do not believe that you ever made such a promise, but, as I have been requested by the Attorney General to take steps to secure to those Indians—*i. e.*, Pueblos—their lands from trespassers and settlers, etc., I feel that it is my duty to look after their title and to call your attention to this fact. This grant, to my certain knowledge, has been proven up since some time in July, and I cannot see that the surveyor general has any right to accept or reject any grant as dependent upon the sale or failure to sell any grant which may conflict with it. You are simply to pass upon the apparent validity of title and not upon which of two grants may be the superior. If you find grant papers to be correct, deed in due form, and proper occupation, etc., without any suspicion, you are bound to approve, without reference to any other grant, or reject the same.

Knowing your opinion on these points, I feel certain that Tomas Baca has misrepresented you or you have been misrepresented to him by some one else.

37 I have therefore to ask that you at once act upon the title of the Indians.

I have not seen Mr. Baca in person, but Jose Leandro Perea, who is interested in "Espiritu Santo," tells me that Baca informed him that you had promised to reject the grant dependent upon the sale or failure to sell. I do not see any interest that could prompt you to such course, and for this reason and from my confidence in your entire integrity I reassert that I do not believe this statement.

But, as I feel that I am to look after these matters of the pueblos under my instructions, I am constrained to at once ask that you act on the Indian pueblo grant, and would be glad to hear from you on this question by return mail.

Very respectfully, your obedient servant,

T. B. CATRON.

38 UNITED STATES SURVEYOR GENERAL'S OFFICE,
SANTA FÉ, N. M., Oct. 10, 1873.

Hon. T. B. Catron.

DEAR SIR: You may rest assured that there is not a word of truth in the statements, accusations, or whatever they may be called of which you speak in your favor of the 8th inst. I never spoke to Don T. de Baca about his grant, nor did I ever speak to Perea at all, that I know of. I have given no opinion of any sort, either contingent or otherwise, in regard to the pueblo claim for the Ojo del Espiritu grant except to Mr. Sam'l Ellison, whom I had supposed, until I received your letter, was sole counsel in the case; nor should I give one contingent upon anything except upon what I believed to be law and evidence; certainly, not upon the private transactions of any person. To Mr. Ellison I, this morning, since receiving your letter, gave a detailed verbal statement of all I know of or had known about the Baca grant or its attempted sale. The parties who were here on that business called at my office to

see the papers in the pueblo claim, but received no intimation of opinion nor promise of any, either direct or indirect. I understood them to say that if they bought they should expect to be defended in the title by Baca and Perea, but only overheard that remark.

I am free to say, however, to you, now that I learn you are counsel in the case, that the Indian claim is not entirely clear. I had never carefully examined the papers in either case until this morning, and especially had never looked over this Baca claim, 39 and I find, to my surprise, that a grant intervened between the Indians and Baca to one Ortiz, and that Baca obtained it by denouncement; but there is no mention made of the Indian claim.

Then the question naturally arises, why didn't they claim this outlying when they did their other or regular pueblo lands? Santo Domingo, San Felipe, Laguna, and others did; why didn't Zia, Jemez, and Santa Ana until May 22, 1873? And, then, the United States have transferred their title to Baca—have I any jurisdiction left?

All these things, as well as some others, I have talked with Mr. Ellison about. I simply desire to do what is right, legal, and just to all concerned, Indians included.

I am not well today. I don't know that I have written as clearly and properly as I ought, and should not have tried it but for your urgency, as the rumor you speak — I certainly should not have hurried about denying on any other account.

I am much obliged for your good opinion and hope to continue to deserve it, notwithstanding the embarrassments that my official duties at times subject me to.

Very respectfully, your obedient servant,

J. K. PROUDFIT,
Surveyor General.

40 *Grant—Heirs of Luis Maria C. de Baca. Amendment of Petition, Document No. 4.*

TERRITORY OF NEW MEXICO,)
County of Santa Fe.)

To the Hon. A. P. Wilbar, surveyor general of the Territory of New Mexico, under the act of Congress approved July 22, 1854:

Your petitioners, the surviving heirs-at-law of one Luis Maria Cabeza de Baca, deceased, would respectfully state to you that on the 23d day of May, 1815, the said Baca presented his petition to the governor of the province of New Mexico asking for a grant of land to himself and children at a place called Ojo del Espiritu Santo, situate in the county of Santa Ana, Territory of New Mexico. On the 24th day of May, 1815, the said grant was duly made of said land by the governor of said province, and on the 13th day of June 1815, the said Baca was duly placed in possession of the lands so granted, having for their boundaries the following points: On the east, the summit of the Jemez mountain; on the west, the

Puerco river and the point of the Prieto table-land; on the north, the table-land commonly called La Ventana; on the south, the cañon of La Querencia and the boundary of the farm of Don Antonio Armenta; all of which facts will more fully appear by reference to a copy of said petition, grant, and possession, hereby made a part of this petition, marked as Exhibit "G" herein.

Your petitioners further state that the said landmarks and boundaries are well known and easily pointed out; but inasmuch as no survey of said lands has ever been made the quantity of land included in said boundaries is not known to your petitioners.

41 Your petitioners further state that the said Luis Maria Cabeza de Baca in his lifetime occupied, cultivated, and lived upon and put valuable improvements upon said lands, and up to the time of his death, about the year 1830, continued to possess said lands without any other person claiming them, nor up to this time do your petitioners know of any adverse title to said lands.

Your petitioners further state that the said Luis Maria Cabeza de Baca, a short time before his death, was driven away from said lands by the hostility of the Navajo Indians, and it has not been since occupied on account of its exposure to the hostility of said Indians, who have been almost constantly at war, and which has prevented its occupancy by your petitioners. Your petitioners further state that said lands are not now in the actual possession of any one, nor are they claimed by any persons but your petitioners, who claimed said lands as theirs absolutely by virtue of said grant as the heirs-at-law of the said Luis Maria Cabeza de Baca. Your petitioners further state that at the death of the said Luis Cabeza de Baca he left him surviving as his heirs the following children, to wit: Luis Baca, Prudencio Baca, Jesus Baca, Sr., Jesus Baca, Jr., Felipe Baca, Domingo Baca, Manuel Baca, Josefa Baca y Salas, Josefa Baca y Sanchez, Juan Antonio Baca, Jose Baca, Jose Miguel Baca, Ramon Baca, Matio Baca, Guadalupe Baca, Altagracia Baca, Rosa Baca, Juana Puala Baca.

The said Juan Antonio Baca died leaving as his heirs him surviving the following children and heirs: Jesus Maria Baca, Francisco Tomas Baca, Encarnacion Baca, Jose Baca, Josefa Baca, Altagracia Baca, Nicolas Baca, Tomas Baca, Trinidad Baca, Cesaria Baca, Domingo Baca, Guadalupe Baca.

42 The said Jose Miguel Baca died leaving the following children and heirs him surviving: Diego Baca, Quirina Baca, Romado Baca, Guadalupe Baca, Paulina Baca, and Martina Baca.

The said Ramon Baca died leaving him surviving the following child and heir: Ignacio Baca.

The said Matio Baca died leaving him surviving the following children and heirs: Luis Baca, Alejandro Baca, Juan de Dios Baca, Martin Baca.

The said Jose Baca died leaving him surviving the following children and heirs: Antonio Baca, Felipe Baca, Jose Maria Baca, Francisco Baca, Fernando Baca, Polonia Baca.

Your petitioners further state that the above list contains the

names of all the living children and grandchildren of the said Luis Maria Cabeza de Baca.

Your petitioners further states that Cesaria Baca, daughter of Juan Antonio Baca, is dead and left her surviving the following children and heirs: Francisco Silva, Isabel Silva, Jesus Maria Silva, Benito Silva, Balentin Silva, and Manuel Silva.

The said Domingo Baca, son of the said Juan Antonio Baca, is dead, leaving him surviving the following children and heirs: Ysabel Baca, David Baca, Ulalia Baca, Santiago Baca, and Adaleida Baca.

The said Guadalupe Baca, daughter of said Luis Maria Cabeza de Baca, is dead, leaving her surviving the following children and heirs: Maria Trujillo, Antonio Trujillo, Andres Trujillo, Juana Trujillo, and Feliciana Trujillo.

Your petitioners further state that Rosa Baca, daughter of Luis Cabeza de Baca, died leaving the following children and heirs: Francisco Baca, Dolores Baca, Josefa Salas.

Your petitioners further state that Juana Paula Baca, 43 daughter of Luis Maria C. de Baca, died leaving the following children and heirs: Antonio Garcia, Francisco Garcia, Inez Garcia, Ana Maria Garcia, and Josefa Garcia.

Your petitioners further state that Feliciana Trujillo, daughter of Guadalupe Baca, died leaving the following children and heirs her surviving: Josefa Lopez, Marto Lopez, Altigracia Lopez.

Your petitioners further state that all of said heirs are residents of the Territory of New Mexico and desire to occupy and cultivate said land as soon as their title is confirmed and they can do so with safety from the hostility of the Navajo Indians, now in a state of war.

Your petitioners further state that they have an absolute title in fee to said lands and ask that the same be confirmed under the act of July 22, 1854, in order that they may obtain a legal title thereto in conformity with the provisions of said act.

All of which is respectfully submitted.

JOHN S. WATTS,
Attorney for Petitioners.

44 *Grant—Heirs of Luis Maria C. de Baca. Testimony, Document No. 5.*

Deposition of Jose Francisco Sales, taken in claim 36.

THE HEIRS OF LUIS MARIA CABEZA DE BACA }
vs. }
THE UNITED STATES.

JOSE FRANCISCO SALES, being first duly sworn, upon his oath states:

Q. Where do you reside? Are you in any way related to the claimants or have you any interest in this claim?

A. I live in Pena Blanca. I am not related to the claimants nor have I any interest in the claim.

Q. Did you know Luis Maria Cabeza de Baca during his lifetime?

A. I did.

Q. When did he die?

A. I saw him die and was present when he was buried, but do not recollect exactly how long ago it was, but think it was in the year 1827.

Q. Please examine the list of children, grandchildren, and great-grandchildren set forth in the petition in this case and state who they are.

45 A. I have examined the list set forth in said petition, and it is a correct list of the names of all the children of Luis Maria Cabeza de Baca now living; also of the heirs of those that are dead.

Q. Where do said heirs reside?

A. In New Mexico.

Q. Are you acquainted with a grant of land made to Luis Maria Cabeza de Baca called Ojo del Espiritu Santo? And, if so, state if it was ever occupied, cultivated, and improved by him in his lifetime; and, if so, how long and for what cause the occupancy was abandoned.

A. I am acquainted with said grant of land. It was occupied for about fifteen years by Luis Maria Cabeza de Baca, during which time a house and corrals were built upon it and the lands extensively cultivated during the time he lived there. He was compelled to leave it on account of the hostility of the Navajo Indians. I remained there during about fifteen years while Don Luis Maria C. de Baca was living on said grant and after his death.

Q. State if it is occupied at present or not; and, if not occupied, why not.

A. It is still unoccupied. Its occupancy would be dangerous on account of the continued hostility of the Navajos. Attempts
46 were frequently made to settle there, but were unsuccessful on account of the Indians.

Q. What number of animals did he have on said grant during his residence there?

A. The number of mares, horses, and cattle which he had there was about eight hundred.

Q. Have you ever heard of any other person claiming said lands but the heirs of Luis Maria C. de Baca?

A. It never was claimed by any person but the said heirs.

Q. When Don Luis Maria C. de Baca went there, was there any person living upon the grant?

A. It was several leagues beyond Jemez and unoccupied up to the time he went there with his family and hired men.

JOSE FRANCISCO ^{his} x SALES.
mark.

Witnesses:

J. HOWE WATTS.
THOMAS MEANS.

Sworn and subscribed before me this 23d day of October, A. D. 1860.

A. P. WILBAR,
Surveyor General of New Mexico.

MANUEL HURTADO, being first duly sworn, upon his oath states:

Q. Where do you reside? Are you related to the heirs of Luis Maria C. de Baca or interested in this claim?

47 A. I live in the county of Santa Ana. I am not related to the heirs nor interested in the claim.

Q. Do you know the place called Ojo del Espiritu Santo; and, if so, who owned and lived upon it?

A. I know the place; it was owned by Don Luis Maria Cabeza de Baca, and was resided upon by him until he was driven away by the Navajo Indians, about the year 1816 or 1817. I went and assisted in removing him and his family and what remained of his stock from that place. He remained there a considerable length of time, but what number of years I cannot state. After the death of Don Luis Maria C. de Baca it was occupied by his heirs until they were compelled to leave it on account of the hostility of the Indians.

(By the SURVEYOR GENERAL:)

Q. Did you know personally the heirs of Luis Maria Cabeza de Baca, who occupied it after his death?

A. I did, and my son-in-law went there with them with their flocks and herds.

(By Same:)

Q. Are the names mentioned in the petition by the attorney, J. S. Watts, familiar to you, and do you know them?

A. I do know them, and the names mentioned in the petition are correct.

MANUEL ^{his} x HURTADO.
mark.

Witnesses:

J. HOWE WATTS.
THOMAS MEANS.

48 Sworn to and subscribed before me this 23d day of October, A. D. 1860.

A. P. WILBAR,
Surveyor General of New Mexico.

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50 In the Court of Private Land Claims, Santa Fé District,
August Term, 189-.

PUEBLOS OF ZIA, SANTA ANA, & JEMEZ, Plaintiffs, }
vs. } No. 50.
THE UNITED STATES and Others, Defendants. }

Transcript.

Appearances: Wm. E. Earle, Esq., and Geo. H. Howard, Esq.,
for plaintiffs; Matt. G. Reynolds, for United States; T. B. Catron,
Esq., for other defendants.

Trial commenced August 3rd, 1893.

Mr. EARLE: I shall ask to have identified all the papers in the
surveyor general's office.

LORENZO LOBATO, sworn as a witness on behalf of plaintiffs, testified, in Spanish, as follows:

Examination by Mr. HOWARD:

Q. What is your name?

A. Lorenzo Lobato.

Q. What is your age and residence?

A. I do not know; I live at Zia.

Q. Where is Zia?

51 A. It is somewhat from the Mesa Blanca.

Q. Is it in New Mexico?

A. I do not know.

Q. Is it in this country?

A. I do not understand all this.

Q. Do you know in what county?

A. I do not know; I do not understand.

Q. How far is the Pueblo of Zia from the town of Bernallio?

A. It is not far.

Q. How far; how many leagues?

A. Maybe two.

Q. Are you an official of the Pueblo of Zia?

A. Yes.

Q. What official?

A. Governor.

Q. Have you any documents of and concerning the lands near Zia?

A. Yes, sir.

Q. Have you any title to the lands lying west of Zia?

A. Yes, sir.

Q. Where is it?

(Witness produces paper, hereafter marked Plaintiffs' Exhibit "B.")

Q. How long have you had this document?

A. Always.

Q. You mean you or your pueblo?

A. Yes.

Q. Pueblo?

A. Yes.

Q. The pueblo has had it always?

52 A. Yes.

Q. How do you know the pueblo has always had it?

A. It has it forever; it has that grant forever.

Mr. HOWARD: I offer the original testimonio given to the Pueblo of Zia; offer it in evidence as Exhibit "B" (for plaintiffs).

Cross-examination by Mr. CATRON:

Q. How long have you been governor?

A. This year.

Q. In what year were you born?

A. I do not know.

Q. Are you thirty years of age?

A. I do not know. We do not count years at the pueblo.

Q. Do you know how to read and write?

A. No, sir.

Q. How long have you had this paper in your possession (referring to Plaintiffs' Exhibit "B")?

A. It may be forty years, more or less.

Q. Have you had that paper in your possession—you yourself—for forty years?

A. (No reply.)

Q. Didn't you get this paper this year, when you were made governor?

A. Yes.

Q. And that is the first time you ever had it?

A. Yes.

Re-examination by Mr. HOWARD:

Q. How do you keep the time—of years?

A. I do not understand.

Q. Do you keep account of moons?

53 A. Yes, sir.

Q. How many moons is it since you had this paper?

A. I do not know.

Recross-examination by Mr. CATRON:

Q. How many moons since you were born?

A. I do not know how many.

Witness excused.

JOSE MIGUEL VIGIL, sworn as a witness on behalf of plaintiffs, testified in Spanish as follows:

After being sworn the first time witness was asked by Mr. Catron:

Q. Do you know what that gentleman (the official interpreter) has just said to you?

A. Yes, sir.

Q. What was it?

A. He asked me what we have known from the ancients.

Witness resworn and direct examination by Mr. HOWARD:

Q. Where do you live?

A. Jemez.

Q. What—the Pueblo of Jemez?

A. Yes.

Q. How old are you?

A. I do not know how old I am.

Q. More or less, how old are you?

A. Probably about seventy years, more or less.

Q. How long have you lived at the Pueblo of Jemez?

A. I do not know. We do not know, like you, what years are. I cannot state that.

Q. Were you there when you were a boy?

54

A. Yes.

Q. Have you remained there ever since?

A. Yes.

Q. Do you know anything about the Pueblos of Jemez, Zia, and Santa Ana having lands west of the pueblos?

A. Yes, sir.

Q. Who have they got the land from?

A. The three pueblos have it from the King of Mexico.

Q. Have you any documents of the Pueblo of Jemez for this land?

A. Yes, sir.

Q. Where is it?

A. At the Pueblo of Zia.

Q. Have you ever had any other one?

A. Yes, sir.

Q. Where is that?

A. It was lost.

Q. Was that document that you had—do you know this document that the Pueblos of Zia has?

A. Yes, sir.

Q. Do you recognize that document (handing witness Exhibit "B," before referred to)?

A. Yes, sir; that is it.

Q. How do you recognize it?

A. I know it because the King of Mexico gave it to us.

Q. How old were you when you first saw it?

A. Because I don't know what year; they were many. I was a young man then.

Q. Did the Pueblo of Jemez have a similar document to that?

Mr. REYNOLDS: Objected to as leading.

By the COURT: Objection sustained.

Q. What kind of a document did the Pueblo of Jemez have?

55

A. The document had been made out anciently during the conquest. I do not know when.

Q. Can you state what are the boundaries of this tract of land that you claim west of the pueblo?

A. Yes, sir.

Q. State them.

A. From the Pueblo of Jemez, the valley to the south.

Q. Which was the west boundary?

A. The hill to the Pueblo of Zia, and from the Pueblo of Zia to follow up to the Mesa de Zia. On the top of that mesa is an old pueblo, which is called Casa Raton. That is the boundary, and from the Casa Raton to the west, on the north bank of the Rio Puerco, on the north side, and then come to the Vallete de Piedra, and then cross the river to the place where there is a small mountain, Cerrito de Alezna, and from there to the north along the Rio Puerco, on the eastern side, to the north, crossing the place Salazar on the east side, and the place called Conehino, in a straight line,

to the small hill called Conchino to the north, straight to the Cerro Cabezon, and coming down to the Posta on the east side, and on the east side of the Rio Puerco, along the river, to the Ventana, and from the Ventana to the place that is called Apache Cave (Cueva Apache) it turned to the east and from the Torenas it turned to the Ojo del Espiritu Santo to the south, leading to the Canada de los Milpas, and then it went up to the Raton.

Q. Which is the eastern boundary that was now mentioned?

A. (No reply.)

Q. I ask you what is the eastern boundary.

A. It is at the place that is called Cerrito de Cabezon.

Mr. CATRON: This question is not about the boundaries they claim, nor do they undertake by the testimony of this witness to establish what they are, because the testimony of this witness
56 does not conform to the claim set up.

Q. Are these Pueblos now in possession of this land?

A. Yes, sir.

Q. How long have they been in possession, as far as you know?

A. I do not know, as we do not understand these reckonings. I don't know how many years it is.

Q. Ever since you can remember has it been in the possession of these persons?

Mr. CATRON: Objected to as incompetent.

Question withdrawn.

Q. Were they in possession of these Pueblos when you were a boy?

Mr. CATRON: Objected to.

By the COURT: Objection overruled.

A. Yes.

Q. Do you know whether your grandfather was in possession of this land?

Mr. CATRON: Objected to.

By the COURT: Admitted subject to objection.

A. Yes.

Q. How do you know they were in possession?

A. From what our fathers and grandfathers say; that's how I know it.

Q. How do you know what your grandfather says?

A. Because our fathers and our grandfathers told us what had been given to us by the King of Mexico, and that's how I know it.

Mr. CATRON: Objected to as incompetent.

By the COURT: Objection overruled.

Q. How do you get the knowledge as to what has happened in the pueblo?

(No reply.)

57 (After some argument as to the object of the last question the court said: We understand that they have no written

language, and that tradition will have to be resorted to to a certain extent in proving this case.)

Cross-examination by Mr. CATRON :

Q. In what year were you born ?

A. I do not know in what year I was born.

Q. Is there any Catholic church at Jemez ?

A. Yes, sir.

Q. Were you baptized in that church ?

A. Yes, sir.

Q. You have always had a priest there, have you not ?

A. Yes.

Q. He speaks the Spanish language, don't he ?

A. I do not know what his name is.

Q. He speaks to you in Spanish, does he not ?

A. Yes, sir.

Q. You understand the Spanish language, do you not ?

A. Yes, sir.

Q. And you have understood that many years ?

A. Yes, sir.

Q. You have understood it ever since you were a boy, have you not ?

A. Yes, sir.

Q. Can you read and write ?

A. No.

Q. Can the Jemez Pueblo understand Spanish ?

A. Yes, sir.

Q. And all the people in Zia do also, do they not ?

58 A. Yes, sir ; all of them.

Q. They have all spoken the Spanish language ever since you remember, have they not ?

A. Yes, sir.

Q. And in Santa Ana they speak Spanish also, do they not ?

A. Yes, sir.

Q. In talking to each other you speak in Spanish, don't you—one Pueblo with another ?

A. Yes, sir.

Q. What did you say was the name of the mountain which was on the west side of the Puerco river ?

A. Sierra Alezna.

Q. How far is that mountain from the Rio Puerco on the west ?

A. It is near the Rio Puerco.

Q. Is it near San Mateo ?

A. Yes, sir ; it is a small alto ; it is small in circumference ; a small mountain.

Q. How long does it take you to go from that River Puerco to that mountain ?

A. Half a day from the pueblo.

Q. What pueblo ?

A. Jemez.

Q. Would you go in a gallop or in a walk?

A. Gallop.

Q. How many leagues is it from the Pueblo of Zemez to the Cerro Alezna?

A. I do not know how many leagues.

Q. Do you know what a league is?

A. No, sir.

Q. Do you know what a vara is?

59 A. Yes; I know that.

Q. If a league is five thousand varas, then you know what it is, don't you?

A. Yes, sir.

Q. Well, a league is five thousand varas—

A. Yes, sir.

Q. Now, how far is it from the Pueblo of Jemez to the Sierra Alezna, each league being five thousand varas?

A. Maybe three leagues.

Q. Now from the Pueblo of Jemez to the Espiritu Santo?

A. It is very near; starting in the morning immediately after breakfast, and we are down at the Ojo del Espiritu Santo.

Q. How many hours would it take you when you were a young man to walk from the pueblo to the Espiritu Santo?

A. In three hours a person gets there.

Q. Walking or running?

A. Walking and running.

Q. How long does it take him to go on horseback in a gallop?

A. Maybe one hour running.

Q. How long does it take him to go from the Ojo del Espiritu Santo to the Rio Puerco?

A. About the same time.

Q. And from the Rio Puerco to the Sierra Alezna how long does it take you?

A. Half a day; it is only a strip.

Q. How far is it from the Ventana to the Rocky ford (Vado de Piedra)?

A. Also only a strip.

Q. How far is it from the Ventana to the Vado de Piedra, then?

60 A. Maybe it is half a mile only.

Q. Do you know the place called the Mesa Prieta?

A. Yes, sir.

Q. What direction is the Vado de Piedra from the Mesa Prieta?

A. The Ojo del Espiritu Santo in the same straight direction.

Q. Ask him if he knows the place called the Mesa Prieta.

A. Yes, sir,

Q. In what direction is the Mesa Prieta from the Vado de Piedra?

A. To the north.

Q. Does he say the Vado de Piedra is to the north of the mesa?

A. Yes, sir.

Q. What direction, then, is the Ventana from the Mesa Preita?

- A. To the south, below.
- Q. How far is the Cabezon from the Espiritu del Santo spring?
- A. That is far.
- Q. How many leagues?
- A. Maybe it may be a league or less.
- Q. Which direction is the Cabezon from the Pueblo of Jemez?
- A. It is on the north.
- Q. How far is it from the Pueblo of Jemez to the Cabezon?
- A. Person starts from the Pueblo of Jemez and gets to the Cabezon at midday.
- Q. What is Cabezon?
- A. They call it Cerrito Cabezon.
- Q. Is there any town there called Cabezon?
- A. It is a small valley of the Indians.
- Q. Which runs furthest east—the Pueblo of Zia or Jemez?
- A. The Pueblo of Jemez.
- Q. How much further east?
- A. Maybe one league; maybe two miles, more or less.
- Q. Where are the cultivated lands of the Pueblo of Jemez;
- 61 on the west side, along the river?
- A. On the west side.
- Q. How close to the pueblo is it? Are these cultivated lands of the Pueblo of Jemez?
- A. Right near the pueblo.
- Q. How far is the farthest land which is cultivated by the Pueblo of Jemez from the church of San Ysidro?
- A. (No reply.)
- Q. How far from the church to the furthest lands which any of the people cultivate?
- A. A league only.
- Q. Do they all cultivate lands within their league?
- A. Yes, sir.
- Q. They do not cultivate any outside of their league, you say?
- A. No.
- Q. How large is the tract of land where the pueblo is situated?
- A. A league on each side.
- Q. And all the lands which are cultivated lie within that tract, do they?
- A. Yes, sir.
- Q. Do the people of Zia have any cultivated lands?
- A. Yes, sir.
- Q. Where are the cultivated lands with reference to their pueblo?
- A. To the west.
- Q. How close to the church of Zia?
- A. It is near the church.
- Q. How large is the tract of land which the Pueblo of Zia has in its place?
- A. The river is somewhat narrow; that is the reason that they cultivate some more?
- Q. Do all their lands lie close to the town of Zia?
- A. Yes, sir; near the town.

- Q. How close to the town?
- 62 A. It is near; about as far as from here to the plaza.
- Q. They had no lands cultivated outside of that distance?
- A. Yes; they have.
- Q. Where?
- A. On the west they have all their farms.
- Q. How far are all their farms, the furtherest of them, from the church?
- A. A league; because they have delivered to us one league.
- Q. All of their lands are within that league?
- A. Yes, sir.
- Q. And they don't cultivate any lands outside of that league?
- A. No, sir.
- Q. Never have?
- A. No, sir.
- Q. Have any of them lived outside of the league?
- A. Yes, sir.
- Q. Where?
- A. To the west.
- Q. How far from the church?
- A. One league.
- Q. They lived inside of the league, then?
- A. Yes, sir.
- Q. None of them have houses beyond the limits of the league?
- A. Yes, sir.
- Q. You mean they have nor have not?
- A. No, sir.
- Q. Now, where is the Pueblo of Santa Ana with respect to the Pueblos of Jemez and Zia?
- A. To the east.
- Q. How far from Jemez is the Pueblo of Santa Ana?
- A. It is one league or two leagues, probably.
- Q. How long does it take you to go from the Pueblo of Jemez to the Pueblo of Santa Ana?
- A. At eleven o'clock.
- 63 Q. Starting at what time?
- A. Going out early in the morning at Jemez, a person gets to Santa Ana at breakfast time.
- Q. How many hours?
- A. A person gets there in small time.
- Q. Do you mean on horseback or on foot?
- A. If a person goes on horseback he goes faster.
- Q. How much land have the people of Santa Ana at this place?
- A. I don't know; I don't know the place; I don't know them.
- Q. Have they any lands, cultivated lands, at any place outside of their league?
- A. Yes, sir; they have on the other side of the river.
- Q. Is not that land in their league?
- A. Yes, sir.
- Q. Is the Pueblo of Santa Ana situated on the Rio Grande?
- A. (No reply.)

Q. It is about forty miles from Jemez to Santa Ana?

A. Yes, sir; maybe that distance.

Q. Do you know how much a mile is?

A. No, sir.

Q. You don't know anything about distances?

A. Yes, sir.

Q. Have any of these Pueblos ever cultivated these lands within the limits of the grant that you recognized as being in the possession of the people of Zia?

A. No, sir.

Q. Have any of them ever had any houses on it?

A. No.

Q. In what way have they occupied it; just by claiming it?

A. Yes, sir.

Q. How many horses have the Pueblo of Jemez at present?

A. I do not know; they have many.

Q. Have the Pueblo of Jemez a hundred horses?

64 A. Maybe more.

Q. Have they a hundred and fifty?

A. Maybe about that many.

Q. Where do they keep their horses?

A. In the mountains.

Q. What mountains?

A. At the Pajarito mountain, or Cero Valliceto.

Q. Where is the Pajarito mountain?

A. On the west.

Q. On the west of what?

A. Jemez.

Q. How far west?

A. Near; about as far as from here to our church of Guadalupe here.

Q. About a half a mile?

A. Yes, sir; on the north.

Q. How far from the town of Jemez?

A. It is a league.

Q. Then it is inside of your league, is it?

A. Yes, sir.

Q. And the Pajarito is inside of your league?

A. Yes, sir.

Q. Where is the Potrero?

A. On the north.

Q. How far is it from the church of Jemez?

A. Maybe it is near a mile or one league, more or less.

Q. Is it also within the league of the pueblo?

A. Yes, sir.

Q. Then you have always kept your horses within the limits of the pueblo league—the people of Jemez?

A. Yes, sir; all the time.

Q. Have you any burros at that pueblo?

A. Yes, sir.

Q. How many burros are there belong to that pueblo?

A. There are many. There are probably fifty or more.

65 Q. They have always pastured them within the limits of the pueblo?

A. Yes, sir; the shep-ards keep them.

Q. You always have a herder for the horses and burros both?

A. Yes, sir.

Q. Have you any cattle?

A. Yes.

Q. How many horned animals have the people of Jemez?

A. I do not know how many. They have many.

Q. Have they got a hundred?

A. Probably.

Q. Is that about the number?

A. Yes, sir.

Q. They have always pastured them within the limits of the league?

A. Yes, sir.

Q. And they keep a herder over them?

A. Yes, sir; there is a herder for them.

Q. Do they have any goats or sheep?

A. No, sir.

Q. Then the only animals they have is horses, horned cattle, and burros?

A. Yes, sir.

Q. And these are always kept herded close to the pueblo, within the league?

A. Yes, sir.

Q. That has been the custom ever since you have had any knowledge of the pueblo?

A. Yes; always.

Q. They have never been allowed to run or pasture outside of the limits of their league?

A. Yes, sir.

Q. They have always been kept close into the pueblo on account of the danger of the Navajos?

66 A. Yes, sir.

Q. You have always kept a guard over them near the pueblo so that he could call the people if they come—if the Navajos come?

A. Yes, sir.

Q. And for the reason you kept them inside your league?

A. Yes, sir.

Q. And have always done so?

A. Yes, sir.

Q. And your father and grandfather told you that they did so during their time, didn't they?

A. Yes, sir; they told us that.

Q. They told you that had been the custom ever since the conquest?

A. Yes, sir.

Q. And that they had never pastured their cattle or animals in any other place except the league?

A. Yes, sir.

Q. Do the people of Zia have any cattle or horses or burros?

A. Yes, sir.

Q. How many horses?

A. I do not know how many; they have many.

Q. Do they have as many as the people of Jemez?

A. Probably.

Q. Have they as many horned cattle as the people of Jemez?

A. Probably more.

Q. Have they two hundred?

A. Probably.

Q. Any more than that?

A. Yes.

Q. How many more?

A. I do not know; they have many.

Q. Have they any burros?

67 A. Yes, sir.

Q. How many burros have they?

A. I do not know; they also have burros; they have many.

Q. About the same number as the people of Jemez have?

A. No more or less, probably.

Q. How far is the Pueblo of Jemez from the Pueblo of Zia?

A. It is a small distance also.

Q. Do you frequently go down to the Pueblo of Zia?

A. Yes, sir.

Q. Have *have* been in a habit of doing that all your life?

A. Yes, sir.

Q. You know, then, where the Pueblo of Zia have kept their horned cattle, horses, and burros ever since you have been a little boy?

A. Yes, sir.

Q. They have kept them within their league all the time?

A. Always.

Q. Never allowed them to get outside of their league?

A. No, sir.

Q. They have always kept their animals just as the people of Jemez have?

A. Yes, sir.

Q. And how close have they kept their animals herded into the church?

A. It is somewhat distant.

Q. But it is within its league?

A. Yes, sir.

Q. How many herders do the people of Jemez and Zia keep out with their herds every day?

A. Only one, each of them.

Q. How old were you when you first knew of the Pueblo of Zia?

A. That I cannot state, because we do not know anything about years.

Q. Were you half grown?

A. Yes, sir.

68 Q. When you first know of the Pueblo of Zia did they herd their cattle and burros within the limits of the league?

A. Yes, sir.

Q. They did not allow them to go outside of it when you first knew them?

A. No, sir.

Q. Did your father and grandfather tell you that had been the custom of the people of Jemez and Zia all the time?

A. Yes, sir.

Q. Have the people of Santa Ana got any cattle or borros?

A. Yes, sir; burros and horses.

Q. Where do they keep them?

A. They herd their horses on the field.

Q. Close of the Rio Grande?

A. Yes, sir.

Q. Way to the east of where Jemez and Zia are?

A. Yes, sir.

Q. They have always her-ed there ever since you have known them?

A. Yes, sir.

Q. And did your father and grandfather tell you that prior to that time they had always her-ed them upon the Rio Grande?

A. Yes, sir.

Q. Ever since the time of the conquest?

A. Yes, sir.

Q. Then from your own knowledge neither the Pueblos of Zia, Santa Ana, and Jemez have ever pastured their cattle outside of their leagues?

A. Yes, sir.

Q. They have always kept them inside of their leagues?

A. Yes, sir.

Q. And from what your fathers and grandfathers and ancestors told you that has always been the custom?

A. Yes, sir.

69 Q. None of the people of Jemez have ever cultivated or lived on any land outside of the league of Jemez?

A. Yes, sir.

Q. And it is also true that none of the people of Zia cultivated or lived on land outside of their league?

A. Yes, sir.

Q. That is, they have always been inside of the league?

A. Yes, sir.

Q. Never gone outside to take up land or to live?

A. No, sir.

Q. Nor have the people of the Pueblo of Santa Ana done that, have they?

A. Neither they.

Q. What is there on the land of the grant in question as to improvements?

A. I do not understand.

Q. What is the grant that we are now trying called ?

A. The grant.

Q. Is it the grant of the three pueblos ?

A. It is the grant to the three pueblos.

Q. Are there any houses on the grant of the three pueblos ?

A. Yes, sir.

Q. Where are they ?

A. At Jemez.

Q. Is Jemez within the limits of the grant of the three pueblos ?

A. Yes, sir.

Q. Is Zia also in the limits ?

A. Yes, sir.

Q. Is Santa Ana also within the limits of the grant to the three pueblos ?

A. Yes, sir.

Q. Then the grant runs from the Rio Grande to the other side of the Rio Puerco ?

A. Yes, sir.

70 Q. How far to the east of the Rio Grande does it extend ?

A. I do not know how far.

Q. Does it extend to the Pecos ?

A. No, sir.

Q. Don't the people of Pecos live there now ?

A. No.

Q. Don't the remains of the Pueblo of Pecos live at Jemez ?

A. Yes ; they are at Jemez.

Q. Have you not extended your grant over so as to take in the Pueblo of Pecos also—does your grant extend clear over to the Pecos river ?

A. Yes, sir.

Q. And the Pueblo of Pecos is about thirty miles to the east of Santa Fé ?

A. Yes, sir.

Q. Then, is Santa Fé in your grant ?

A. Yes, sir.

Q. Now, don't your grant extend to Washington city on the east ?

A. Yes.

Q. And it takes in San Francisco on the other side ?

A. Yes, sir.

Q. And it extends on the north to British Columbia ?

A. Yes, sir.

Q. And it extends on the south to the city of Mexico ?

A. Yes, sir.

Q. I thought so. Now you've got a grant worth something. Outside of the league the Jemez people have never had any cultivation or houses, have they ?

A. Yes, sir.

Q. You mean they have or have not ?

A. No, sir.

Q. Neither the people of Zia have had any houses outside of their league, have they?

A. No, sir.

71 A. Zia? No, sir.

Q. And the people of Santa Ana never claimed any outside of their league, have they?

A. No, sir.

Q. Do you know the spring of the Ojo del Espiritu Santo?

A. Yes, sir.

Q. How long have you known that?

A. From the time I was born.

Q. Was there anybody living at the Ojo del Espiritu Santo?

A. Diego Baca.

Q. How long has he lived there?

A. I do not remember how long.

Q. Was he living there when you were a little boy?

A. Yes, sir.

Q. And did he live there when your grandfather was a little boy?

A. Yes.

Q. And when your great-grandfather was a little boy he was still living there?

A. Yes, sir.

Q. And he was living there at the time of the conquest?

A. Yes.

Q. He has always lived there?

A. Yes.

Q. Has he any cultivated lands there?

A. Yes, sir.

Q. He has a house there?

A. Yes, sir.

Q. Has he any animals?

A. Yes, sir.

Q. What has he?

A. Horses, cattle, and sheep.

Q. Where does he keep them?

A. He has them there; I don't know.

72 Q. He keeps them around in the neighborhood of the spring, does he not?

A. Yes, sir.

Q. And waters them at the spring?

A. Yes, sir.

Q. Does he water them at any other place?

A. At the Rio Puerco.

Q. Other people pasture their cattle all through that neighborhood, do they not?

A. Yes, sir.

Q. All the Mexicans for the past seventy years have pastured their animals and cattle *their*, haven't they?

A. All pastured.

Q. And nobody has interfered with them in using the waters and pastures as they liked?

A. Yes, sir.

Q. Nobody disturbed them?

A. Yes, sir.

Q. You mean that they have not been disturbed?

A. Always.

Q. That whole country has been free and open to everybody?

A. Yes, sir.

Q. Been public land, hasn't it?

A. Yes, sir.

Q. How many people are there in the Pueblo of Jemez?

A. There are many.

Q. How many do you say there are over twenty-one years of age at Jemez?

A. I do not know how many.

Q. Are there a hundred?

A. Yes, sir.

Q. Are there five hundred?

A. I do not know; probably there are.

73 Q. Ask him if it is not true that there are not over five hundred men, women, and children.

A. Probably that is the amount.

Q. Are there as many at Zia as there are at Jemez?

A. I do not know how many there are.

Q. Which has the most people, Jemez, Zia, or Santa Ana?

A. Jemez and Santa Ana.

Q. Zia is the smaller place?

A. Yes, sir; very few.

Q. Is Santa Ana smaller than Zia?

A. It is larger.

Re-examination by Mr. HOWARD:

Q. What do you usually call this land that you are claiming here?

A. The Rio Puercio on the east side.

Q. What name do you usually give it?

A. Del Pasteo for the animals.

Q. Then you call that the pasture grant?

Mr. REYNOLDS: Objected to as leading.

Withdrawn.

Q. Do you know where the Cañada de las Milpas is?

A. Yes, sir.

Q. Is that within the limits of the grant that you now claim?

Mr. CATRON: Objected to as leading. Ask him where it is, don't tell him where it is.

Question withdrawn.

Q. Where is the Cañada de las Milpas from the Pueblo of Jemez?

A. Somewhat to the south.

Q. How far from the Pueblo of Jemez?

A. It is somewhat near. I do not know the distance.

Q. About what distance more or less?

A. It may be a league or somewhat less.

Q. Is it inside or outside of the league of Jemez?

A. Outside.

74 Q. Then it is not in the lands that they claim?

A. Yes, sir.

Q. Is the Cañada de las Milpas not in the lands that the pueblos claim?

A. Yes, sir.

Q. Within what lands that the pueblos claim?

A. To the Cañada de las Simbra.

Q. Within what lands are the Cañada de las Milpas situated that the pueblos claim?

A. Those lands that belong to the people of Zia.

Q. Is this Cañada de las Milpas within the limits of the pasture grant that you have described?

Mr. REYNOLDS: Objected to as leading.

By the COURT: Objection sustained.

Q. How far is this cañada and in what direction is it from the church of the Pueblo of Zia?

A. To the west.

Q. Is it in or outside of the league of the Pueblo of Zia?

A. Outside of the league.

Q. Do you know whether the inhabitants of either of these three pueblos farm—does anybody cultivate this Cañada de las Milpas?

A. Yes, sir; the people of Zia.

Q. How long have they cultivated—as long as you can remember?

A. From ancient time.

Q. How can they claim this land if it is outside of their pueblo?

A. Because they do that from ancient time. They have temporal farms (depending upon rainfall).

Q. Have the Pueblo of Zia cultivated anywhere else in that neighborhood and outside of their league?

A. Yes; outside of their league, in the Place Cañada de las Milpas; they only.

Q. Have the Pueblos of Jemez, Zia, and Santa Ana ever pastured their stock on land but outside of the limits of their league?

75 A. Yes, sir.

Q. Where?

A. In every direction they pastured them.

Q. Do they pasture them as far as the Rio Puerco?

A. Yes, sir.

Q. Do they pasture them as far as the Ventana?

A. No, sir.

Q. Do they pasture them as far as the Vado de Piedra?

A. No, sir.

Q. How long have the Pueblos of Zia, Santa Ana, and Jemez been on this land of the Rio Puerco?

Mr. CATRON: Objected to.

Question withdrawn.

Q. How long have the Pueblos of Jemez, Zia, and Santa Ana herded as far as the Rio Puerco?

A. Some years ago; in former times the horses were herded towards the Rio Puerco.

Q. Do you know whether your ancestors pastured their stock and horses as far as the Rio Puerco?

A. Yes.

Mr. CATRON: I object and ask to have that all stricken out.

Q. How do you know your ancestors pastured as far as the Rio Puerco?

Mr. CATRON: Objected to.

By the COURT: Objection overruled.

A. Because the horses were the animals that were pastured in that direction.

Q. How do you know that your ancestors pastured their stock as far west as the Rio Puerco?

A. In former times the people, each quarter, composed of eight or six men, would herd for a week the animals in that direction.

Q. Do the people of Jemez, Zia, and Santa Ana pasture their stock as far west as the Rio Puerco?

76 A. No, sir.

Q. How far west do they pasture?

A. The people of Zia and Santa Ana pasture around their pueblo on the mountains, on the hills, and on the plains.

Q. Where did your father pasture his stock?

Mr. CATRON: Objected to. Witness has not said his father had any stock.

Question withdrawn.

Q. Had your father stock?

A. Yes.

Q. Where did he pasture his stock?

A. There around the pueblo on the mountains and on the hills there.

Q. How far west did his father pasture his stock?

A. Chapulin, to the Chapulin and the Espiritu Santo spring and along that valley, on the west side of the valley.

Recess taken until 2 o'clock.

At 2 o'clock trial resumed.

Examination of witness VIGIL continued on re-examination.

By Mr. HOWARD:

Q. What do you call this claim that you are now claiming in this court?

A. Pasture grant.

Q. Do you know the Ojo del Espiritu Santo in the valley of the Espiritu Santo?

A. Yes, sir.

Q. Where are they with respect to the pasture grant you speak of?

A. The place is there between the Ventana to the Ojo del Espiritu Santo to the south.

Q. Who has pastured upon this pasture grant you have described since you remember?

Mr. CATRON: Objected to. There is no proof that he remembers that anybody has.

By the COURT: Objection overruled.

A. Those from Jemez and those from the Pueblo of Zia and those from the Pueblo of Santa Ana.

Q. How far west do they pasture from the Pueblos of Zia, Santa Ana, and Zemez?

A. To the Rio Puerco.

Q. And from what point on the north to what point on the south do they pasture?

A. The Ventana.

Q. On the south?

A. Vado de Piedra (rocky ford).

Q. Did your father and the fathers of the present generation of Zia, Santa Ana, and Jemez have stock on this grant?

A. Yes, sir.

Mr. CATRON: Objected to as ask- to have stricken out.

By the COURT: Overruled.

Q. Where did they pasture this stock?

A. To the Rio Puerco.

Q. Is the grant that his father pastured on the same land that they claimed under this grant?

A. Yes, sir; the same land.

Q. Do you know where the Cañada de Chavarria is?

A. No, sir.

Q. Do you know any cañada called the Vado de Piedra?

A. No, sir.

Q. Do you know whether there are any lands cultivated by any of the Indians of these three pueblos near the Vado de Piedra?

Mr. CATRON: Objected to as leading.

By the COURT: Objection overruled.

A. No, sir.

Q. Tell this court where the boundaries of this grant of pasteo are that you speak of.

78 Mr. CATRON: Objected to.
Question withdrawn.

Recross-examination by Mr. CATRON:

Q. Who is your father?

A. Santiguito Vigil.

Q. Where was your father born?

A. Jemez.

Q. Wasn't he born at Pecos?

A. Yes; he was born there.

Q. And didn't he live at Pecos until the Pecos pueblo was abandoned?

A. Yes, sir.

Q. Wasn't you born at Pecos?

A. Yes, sir.

Q. And Pecos is east of Santa Fé?

A. Yes.

Q. How long did you live at Pecos?

A. I do not know how long.

Q. You were a man when you left Pecos, weren't you?

A. Yes.

Q. Fifteen or twenty years old?

A. Probably about that age.

Q. You remember very well the time when you left Pecos, don't you?

A. Yes, sir.

Q. You don't belong to the Pueblo of Jemez, you belong to the Pueblo of Pecos?

A. Yes, sir.

Q. Wasn't it after the American troops came to this country that you left Pecos and went over to Jemez?

A. At that time when there was war with those from the upper portion of the country and when Albino Perez was killed.

Q. Wasn't it about the time the American troops came into this country?

A. Yes; at that time we had already started from Pecos to Jemez.

79 Q. You saw the American troops come by the Pecos when they came through there going from Las Vegas to Santa Fé?

A. Yes, sir.

Q. And you were there when General Karney came to this country—

A. We were there—

Q. By the Pecos?

A. Yes, sir.

Q. It was after that you went over to Jemez?

A. Afterwards.

Q. Your father, you say, pastured some animals there towards the Puerco river?

A. Puerco river.

Q. In what year did he pasture those animals?

A. Because we were already there.

Q. What year was it?

A. In the year we started from Pecos to Jemez.

Q. Then, when you went there you put your animals on the Puerco river?

A. Yes, sir.

Q. Weren't the Navajos at that time at war?

A. Yes, sir.

Q. And they wouldn't let you keep them there, and they drove you back from the Puerco east from the Puerco, didn't they?

A. Yes, sir.

Q. And the Navajos always stole the animals of the Pueblo Indians when they got very far away from their pueblos, didn't they?

A. Yes, sir; always.

Q. And for that reason the Jemez and Zia Indians always kept their animals close to the pueblo, didn't they?

Mr. EARLE: Objected to as a repetition.

By the COURT: Objection sustained.

Q. Is there any water in the Cañada de los Milpas?

80 A. No.

Q. How long has it been since there was any crop raised or planted in the Cañada de los Milpas by any one?

A. It is years ago; I don't know how many years.

Q. Is not the Cañada de los Milpas all grown up with chamiso?

A. No.

Q. How is it?

A. It is temporal.

Q. Has there been any land cultivated—how many years has it been since land was cultivated in the Cañada de los Milpas?

A. About ten years.

Q. Is it not true that there hasn't been a seed sown in the Cañada de los Milpas for forty years?

A. Yes, sir.

Q. Is it not at least fifty years since anything was sowed there?

A. Yes, sir.

Q. How long since you were in the Cañada de los Milpas?

A. I don't remember.

Q. You have not been there for forty years?

A. Yes; I have.

Q. You never were in the Cañada de los Milpas, were you?

A. No, sir; never.

Q. You don't know what kind of a place it was?

A. Yes; I do not know.

Q. Did you ever see any crops sown in the Cañada de los Milpas?

Mr. EARLE: Objected to.

By the COURT: Objection sustained.

Witness excused.

IGNACIO CALAQUI, sworn on behalf of plaintiffs, testified in Spanish as follows:

Examination by Mr. HOWARD:

- Q. What is your name?
81 A. Ignacio Calaqui.
Q. Where do you live?
A. Rio de Jemez.
Q. Do you live in any pueblo?
A. Yes, sir; the Pueblo of Jemez, county of Bernalillo.
Q. About, more or less, how old are you?
A. I am about seventy years old, more or less.
Q. Do you know the name of the claim for the land which you are claiming in this court?
A. Yes, sir.
Q. What is its name?
A. The land—I know it from the Rio Grande to the Rio Puerco for pasturage.
Q. What is the name of this land that you are claiming here?
A. It is called Merced de Pasteo.
Q. Do you know where the Ojo del Espiritu Santo are that lie in the valley of the Espiritu Santo?
A. Yes, sir.
Q. Where are those places with respect to this grant?
A. They are from the Jemez to the Rio Puerco.
Q. What is your official position in Jemez?
A. I am the principal officer.
Q. Do you know where the Cañada de los Milpas is situated?
A. Yes, sir.
Q. In what direction is it from the Pueblo of Zia?
A. To the west.
Q. About how far, more or less?
A. It is about a league.
Q. Is it out or inside of the league of the Pueblo of Zia?
A. It is outside of the league, but it is within the pasture grant.
Q. What use is made of this pasture grant by the Indians of Santa Ana, Zia, and Jemez?

Mr. CATRON: Objected to.

82 By the COURT: Objection overruled.

- A. What pueblos?
Q. The three pueblos.
A. For pasturing.
Q. For pasturing what?
A. To pasture horses, cattle, and sheep.
Q. Did any of these three pueblos make any other use of these lands of this pasture grant?
A. Yes.

- Q. What ?
A. To pasture.
Q. Did they make any other use of it but pasturing ?
A. Yes.
Q. What ?
A. To possess it.
Q. To possess it how ?
A. Possess it with temporales.
Q. Where ?
A. At the Cañada de los Milpas.
Q. Which of the pueblos possessed the Cañada de los Milpas with temporales ?
A. Those from Zia.
Q. How long have those from the Pueblo of Zia occupied this with temporales ?
A. Many years ago.
Q. As long as you remember ?
A. Yes, sir.
Q. Do you know whether your father possessed this Cañada de los Milpas with temporales ?
A. Yes, sir.
Q. Do you know whether your grandfather possessed this Cañada de los Milpas with temporales ?
A. Those from Zia.
Q. How do you know they possessed this land with temporales ?
83 A. From the principals who are living and the information given to the young ones who are being born.
Q. Do you know a cañada called Achavarria ?
A. Yes, sir.
Q. Where is this Cañada de Achavarria ?
A. From the Vallito below.
Q. Below or above the fall ?
A. Above.
Q. Where is this Cañada de Achavarria with respect to the pasture grant ?
A. (No reply.)
Q. Ask him if this Cañada de Achavarria is west or east of the Rio Puerco.
A. To the east.
Q. Do you — whether if any of these Pueblos of Zia, Santa Ana, and Jemez made any use of this Cañada de Achavarria ?
A. Those from Santa Ana.
Q. What use did they make of it ?
A. Possessed it.
Q. How did they possess it ?
A. By temporal.
Q. Do you know how long they possessed it with temporals ?
A. Yes, sir.
Q. About how long ago ?
A. It is long ago.

Q. As long as you can remember? How big were you when you knew they possessed it by temporals?

A. They were possessing it when I came to the age of reason.

Cross-examination by Mr. CATRON:

Q. Where were you born?

A. At Jemez.

Q. Then you belong to the Pueblo of Jemez, do you?

A. Yes, sir.

Q. You don't belong to Zia?

84 A. No, sir.

Q. Never lived in Zia, did you?

A. No, sir.

Q. You are a farmer, aren't you?

A. Yes, sir.

Q. And attend to your farm?

A. Yes, sir.

Q. You very seldom go away?

A. Yes, sir.

Q. It has been a good many years that you haven't been away from the Pueblo of Jemez until you came here, hasn't it?

A. No, sir.

Q. When did you go away from the pueblo the last time before you came here?

A. I have not gone out.

Q. You have all your life been there, have you?

A. Yes, sir.

Q. This is the first time in all your life you ever left the Pueblo of Jemez?

A. Ask him of Santa Fé.

Q. Except this time?

A. I do go out in the neighborhood.

Q. You always stay within the limits of the league?

A. Yes.

Q. How far is the church of the Pueblo of Jemez from the Rio Puerco?

A. Six or seven miles.

Q. How far is it from the Pueblo of Jemez to the Ojo del Espiritu Santo?

A. It is near.

Q. Well, how far is it?

A. About three or two hours, probably.

Q. Is there anybody living at the Ojo del Espiritu Santo?

A. Yes, sir.

Q. Who is it?

85 A. Diego Baca.

Q. How long has he lived there?

A. He has lived there about twenty or fifteen years.

Q. Hasn't he lived there for forty years?

A. I don't know.

Q. Didn't his father live there before him?

A. Yes.

Q. Did you know Luis Cabeza de Baca?

A. No, sir.

Q. You have heard of him?

A. Yes, sir.

Q. He owned the grant that covered the land where the Espiritu Santo spring is, didn't he?

Mr. EARLE: Objected to as immaterial.

By the COURT: Admitted subject to objection.

A. I don't know, sir.

Q. That land was always recognized as belonging to Luis Maria Cabeza de Baca and his children, wasn't it?

A. No, sir.

Q. Hasn't it been known in the public there as belonging to him?

A. No, sir.

Q. You know the place called the Jemez mountain?

A. No, sir.

Q. Isn't there a mountain lying between the Pueblo of Jemez and the Espiritu Santo spring called the Jemez mountain?

A. I have not heard it so called.

Q. Is there any mountain lying between the Espiritu Santo springs and the Pueblo of Jemez?

A. Yes; there are there many of them.

Q. On what side of that mountain does the valley of the Espiritu Santo lie?

A. On the other side.

86 Q. When did you first know the Espiritu Santo springs?

A. I was already grown up when I knew it.

Q. You didn't know it, then, until you were twenty or twenty-five years old, did you?

A. I was probably fifteen years old when I knew it.

Q. Who was living there then?

A. Nobody.

Q. Wasn't there some houses there?

A. No, sir.

Q. Wasn't there some corrals there?

A. No.

Q. Didn't people pasture sheep around there?

A. No; I don't remember.

Q. You do not remember very much what took place when you were fifteen years old?

A. No.

Q. Who told you to say you were seventy years old?

A. I knew it.

Q. How do you know you are seventy years old?

A. I knew it.

Q. How?

A. Because I say about twenty years more or less at the time when these gentlemen came into this country.

Q. You mean the American troops?

A. (No reply.)

Q. Do you mean that you were twenty years old when these gentlemen came into this country?

A. No.

Q. Did you know the Navajo Indians?

A. Yes, sir.

Q. Where did they live with reference to the Pueblo of Zia and Jemez?

A. To the west.

87 Q. When you were a young man weren't the Navajos *had* war with the Pueblos?

A. Yes.

Q. How old were you when you first knew them to be at war?

A. I don't remember the first time.

Q. You were *very* young, weren't you?

A. Yes.

Q. They kept up war continuously until they were taken over to the Bosque Redondo?

A. Yes, sir.

Q. It was always dangerous for the people of Zia and Jemez to let their stock run out?

A. Yes, sir.

Q. The people of Zia and Jemez kept their stock close to the pueblos, did they not?

A. Yes, sir.

Q. When you were a boy it was dangerous to take your stock over to the Puerco river, wasn't it?

A. Yes, sir.

Q. And you never did take them over there when you were a boy, did you?

A. Yes, sir.

Q. You always kept them close at home, didn't you?

A. No; they roamed around.

Q. And did the Indians attack them?

A. No; because many people went out with their horses.

Q. Did the people turn out and all go with their horses out every day?

A. They would pasture them.

Q. They drove their horses in every night, did they not?

A. They secured them.

Q. Brought them home to the pueblo?

A. No.

88 Q. What did they do with them if they did not bring them to the pueblo?

A. Kept them in the field.

Q. How close to the pueblo did they bring them, in the cultivated fields?

A. No, sir.

Q. Did they bring them inside of the league?

A. Yes; in the night-time, and in the daytime they would take them out.

Q. Did they bring their cattle in at night?

A. Yes.

Q. They always kept the cattle inside of the pueblo, didn't they, so that the people could go out and drive off the Navajos if they attacked them, didn't they?

A. They took them out to pasture sometimes outside of the league.

Q. But they most generally kept them inside of the league, didn't they?

A. Yes; when they were at war.

Q. And they were at war all the time until the Navajos were taken to the Bosque Redondo?

A. Always; yes.

Q. And prior to the time that the Navajos went to the Bosque Redondo the Jemez and Zia people kept their cattle inside of the league, didn't they?

A. Outside of the league.

Q. Didn't they keep them inside while the Navajos were there?

A. Outside of the league.

Q. Did they keep them all the time outside the league?

A. Yes; pasturing.

Q. Every night?

A. At night they watched them.

Q. Now, isn't it true that they watched them in the daytime and corraled them at night?

89 A. Yes; in the daytime they watched and guarded them.

Q. How much is the league of the Pueblo of Jemez—how many leagues are in the Pueblo of Jemez?

A. Everywhere.

Q. From the church?

A. (No reply.)

Q. Don't you know? From the church where?

A. In every one of the directions—to all directions one league.

Q. Did you pasture your animals in the direction of the Rio Grande?

A. Yes; at times.

Q. Did you pasture them in the direction of the Cañon de Jemez?

A. Yes, also.

Q. Did you pasture them in the direction towards the south?

A. Yes; in every direction.

Q. In that country everybody else pastures their animals around there, too, didn't they?

A. Yes; in every direction was pasture to everybody.

Q. Mexicans as well as Indians?

A. Yes, sir.

Q. Nobody from your pueblos ever prohibited anybody from pasturing their animals anywhere in that vicinity?

A. No, sir; everybody joined together.

Q. That whole country was regarded as public land for everybody to go on, wasn't it?

A. Yes.

Q. And everybody could go on this land and pasture?

A. No; only those belonging there.

Q. Those living around there did so, didn't they?

A. Yes, sir.

Q. Those who had sheep down at Bernalillo used it, didn't they?

A. I don't know.

Q. Those who had sheep around Peña Blanca, too, didn't they?

90 A. I don't know anything about it.

Q. You don't know much about these lands yourself, do you?

A. No, sir.

Q. How many miles is it from the Ventana to the Vado de Piedra?

A. About seven or eight miles.

Q. How long does it take you to go from the Ventana to the Vado de Piedra on horseback?

A. Half a day, very near.

Q. How long does it take you to go from the Pueblo of Jemez to the Puerco river near the Mesa Prieta?

A. Not less than half a day on horseback.

Q. Do you know the mesa called the Mesa Prieta?

A. Yes, sir.

Q. Where is the Cañada de Achavarria from the Mesa Prieta?

A. On this side.

Q. Is the Cañada de Achavarria near the Puerco river?

A. Yes, sir.

Q. It runs out into the Puerco river, doesn't it?

A. Yes.

Q. And that is down south of the Mesa Prieta?

A. Yes.

Q. How many miles is the Cañada de Achavarria south of the south point of the Mesa Prieta?

A. A strip.

Q. Is it a league south of the Mesa Prieta?

A. No.

Q. Is it a mile?

A. No; it is near.

Q. How near is it to the Mesa Prieta?

A. It is near.

Q. Well, is it a mile from it?

A. More or less.

Q. Is it a thousand varas?

A. No.

Q. Is it two thousand varas?

91 A. It is somewhat distant.

Q. Is it two thousand varas?

A. No; probably less.

Q. It is, then, between one and two thousand varas?

A. Yes.

Q. Were you ever in the Cañada de las Milpas?

A. Yes.

Q. When were you there?

A. Not long ago.

Q. Was that the first time you were ever there?

A. Yes; not very long ago.

Q. Is there any land being cultivated in that cañada now?

A. No, sir.

Q. You never did see any land cultivated there, did you?

A. Yes; I have.

Q. How long ago?

A. It is about twenty or twenty-five years ago.

Q. How many years did they plant there at that time? Was it just one year?

A. No; from the time it was peopled.

Q. What Indians have you *saw* cultivating the land in the Cañada de las Milpas; what was his name?

A. Those from Zia.

Q. What was the name of the Indian?

A. Tomas Felipe, Santiaguito Baltazar; those are the ones that plowed.

Q. Did they live there or did they live in Zia?

A. They stayed there in their camp and had their farm there.

Q. Where did they stay the rest of the time?

A. They stayed there.

Q. Did they stay in Zia or out there in the winter time?

A. In the winter time they stayed there until they carried away all their crops.

Q. When did they come back there?

A. They returned that year.

92 Q. How close did you say that was to the Pueblo of Zia?

A. About two leagues.

Q. You said while ago it was about one league or less?

A. Yes; because it is near.

Q. Did they have a house there?

A. Yes.

Q. What kind of a house did they have?

A. They built their house there.

Q. Is there any one living there now?

A. It is not possessed on account of the dry weather.

Q. Has there been anybody there in the last ten years?

A. Yes; those from Zia go there.

Q. Within the last ten years?

A. Yes.

Q. Give the names of some who have been there during the last ten years.

A. No, sir.

Q. Isn't it true that there hasn't been anybody there within the last ten years?

A. Yes.

Q. How old were you when you first saw the Cañada de los Milpas?

A. I was already grown up.

Q. All you know about cultivation of the Cañada de los Milpas is what you saw when you were a grown-up man and what the old people said?

A. Yes, sir.

Q. When were you at the Cañada de Achavarria?

A. Long ago.

Q. Is it forty years ago?

A. I do not know.

Q. How old were you when you first knew the Cañada de Achavarria the first time?

A. I was already grown up.

93 Q. Do you know in what year you were born—the particular year?

A. No, sir.

Q. Do you remember when the American troops came into this country?

A. Yes, sir.

Q. Where were you when they came in?

A. At the pueblo.

Q. Did you see the troops go by the pueblo when they were out in the country after the Navajos?

A. Yes, sir.

Q. You know what year that was?

A. No, sir.

Q. Did they go by the pueblo, or did they go by some other road?

A. (No reply.)

Q. You didn't see them, did you?

A. I did not see them.

Q. You were quite young then?

A. Yes, sir.

Q. You were about ten or twelve years old at that time, weren't you?

A. I was already a boy.

Q. Did you say your father had land in the Cañada de los Milpas?

A. No, sir; those from Zia. I am from Jemez.

Q. Your father never had any cultivation in the Cañada de los Milpas?

A. Yes; pasture land.

Q. In the Cañada de los Milpas—if that land was cultivated, was it pastured also?

A. Yes; outside of the farm.

Q. Did the people of Jemez pasture down at the Cañada de los Milpas?

A. Yes.

Q. Did they cultivate down there?

A. No; they pastured their flocks.

94 Q. That is about as far as they went *went* away with their flocks, wasn't it?

A. Yes.

Q. Is the Cañada de los Milpas near a stream?

A. Yes; below.

Q. Near what stream is it?

A. The Rio Salado.

Q. How far is it from the river of Jemez?

A. It is near.

Re-examination by Mr. HOWARD:

Q. What did you mean by the land being cultivated in the Cañada de Achavarria from the time it was peopled?

A. Where?

Q. What did you mean by saying that the Cañada de Achavarria was cultivated from the time it was peopled—by the Santa Ana?

A. Yes, sir.

Q. How long did they sow it?

A. For a long time; I can't remember well, but they possessed it.

LORENZO VICENTE, sworn, testified in behalf of plaintiffs in Spanish as follows:

Examination by Mr. HOWARD:

— How old are you?

A. I can't remember how old I am.

Q. How old were you when the Americans came in and took possession of New Mexico?

A. I do not know.

Q. Where do you live?

A. Santa Ana.

Q. Pueblo of Santa Ana?

A. Yes, sir.

— What county is the Pueblo of Santa Ana in?

A. I can't remember.

Q. How far is it from Bernalillo?

A. I can't remember.

Q. In what direction is it from Bernalillo?

95 A. Below.

Q. In what direction is the Pueblo of Santa Ana from the Pueblo of Zia?

A. To the west.

Q. On what river is the Pueblo of Santa Ana?

A. On the River Jemez.

Q. Which of the three pueblos is the closer to Bernalillo?

A. Santa Ana.

Q. How long does it take you to ride on horseback from Santa Ana to Bernalillo?

A. I don't know.

Q. How big were you when the Americans came in New Mexico?

A. About that height (indicating about three feet).

Q. About how many years were you?

A. I had that height (indicating as before).

Q. Do you know the name of the claim for land that you are now presenting to this court?

A. I don't know, sir.

Q. What is the name of the land that you are presenting to this court of the three towns?

A. For pasturage.

Q. What is that pasture grant called; has it any name that you know of?

A. Yes, sir; from my forefathers and principals; they knew it and I know it was that.

Q. What was the name?

A. I don't know the name, but our fathers and elders knew it.

Q. Do you know the Ojo del Espiritu Santo?

A. Yes, sir.

Q. How does that valley and that spring lie with reference to this pasture land that you speak of?

A. To the north.

Q. Is it outside of this pasture land that you are claiming?

A. It is inside of the boundary.

96 Q. Do you know the Cañada de Achavarria?

A. Yes.

Q. What direction is this Cañada de Achavarria from Santa Ana?

A. West.

Q. How far west of Santa Ana?

A. The farm?

Q. Yes; the farm land at Achavarria.

A. The farm.

Q. Who farms there?

A. People of Santa Ana.

Q. How long do they farm there, these people of Santa Ana, at this Cañada de Achavarria?

A. I don't know, but they have ploughed there for many years.

Q. Did your father farm there?

A. Yes; probably he did farm there, but he does not farm there now.

By Mr. CATRON: Move to strike that answer out. The witness says he probably farmed there.

By the COURT: The answer will be stricken out.

Q. How do you know what your ancestors did; how do you learn what your ancestors did about the land?

A. I don't remember any such matter.

Cross-examination by Mr. CATRON:

Q. Do you know where the Vado de Piedra is?

A. Yes, sir.

Q. Where is that?

A. On the west.

Q. West of what?

A. In the vicinity of the Cañada de Achavarria and the Rio Puerco.

A. About how far from the Cañada de Achavarria is the Vado de Piedra?

A. To the north.

Q. Which is to the north?

A. The Vado de Piedra is to the north.

97 Q. In what direction does the Cañada de Achavarria lie from the Vado de Piedra?

A. To the west.

Q. On what side of the Rio Puerco is the Cañada de Achavarria?

A. Within the land.

Q. Within what land?

A. Within the land of the pasturage.

Q. When they first came to this country, the American troops, did they pass by the Pueblo of Santa Ana?

A. I don't remember.

Q. You were only a boy when the American troops first came into this country?

A. About that high (indicating).

Q. About ten or twelve years old. You don't remember anything that took place before that time, do you?

A. Yes, sir; because I was not there.

Q. But you don't remember anything about this land before the American troops came in here, do you?

A. No.

Q. All you ever heard about them is what you heard since that time?

A. No.

Q. You never worked in the Cañada de Achavarria, did you?

A. No, sir.

Q. How old were you when you were at the Cañada de Achavarria at the first time?

A. One year.

Q. Do you mean that you were a baby or that you were a grown man?

A. I was somewhat big, aged.

Q. When you first saw the Cañada de Achavarria you were a grown-up man?

A. Somewhat.

Q. How many years was that after the American troops that you first went to the Cañada de Achavarria?

98 A. I don't remember.

Q. Several years, wasn't it?

A. Yes.

Q. What did you do out there when you first went to that place?

A. I worked.

Q. Who did you work for?

A. For my brothers.

Q. Is your brother living?

A. Yes.

Q. Where is he?

A. He is at pueblo.

Q. Is he older than you?

A. I was the oldest.

Q. Your brother owned a farm over there and you went to work for him at that time?

A. Yes.

Q. Your brother, then, was a grown-up man when he owned that farm, was he?

A. Yes, sir.

A. How many years are you older than your brother?

A. I don't remember.

Q. Are you five years older?

A. I don't remember; I don't know.

Q. Then are you ten years older?

A. Certainly.

Q. There are a great many Mexican people living around within a few miles of this land, are there not?

A. Where?

A. This pasture land that you speak of.

A. Now?

Q. Isn't there somebody living at the Ojo del Espiritu del Santo?

A. Don Tomas is there.

Q. Tomas who?

99 A. Tomas Baca.

Q. How long has he been there?

A. I don't know how long?

Q. Was he there when you were a young man?

A. No.

Q. Was his father there then?

A. No, sir; probably he was.

Q. Who, if you know, was the father of Diego Baca there?

A. No, sir.

Q. Did you know Miguel Baca?

A. No, sir.

Q. Did you know any relatives of Diego Baca?

A. No, sir.

Q. The people of that part of the Territory have pastured these lands all around the Pueblo of Jemez and Zia, haven't they, the same as the Indians?

— Yes, sir.

Q. Nobody has been deprived of any right to pasture, have they?

A. No; the pasturage belonged only to Jemez, Zia, and Santa Ana.

Q. But nobody has been driven away from there, has they?

A. No, sir.

Q. Everybody has been allowed to go over the land as they pleased, have they not?

A. Yes.

Q. Diego Baca has stayed there with his sheep, has he not?

A. I don't know how many.

Q. He has got some, hasn't he?

A. I don't know. I have never been there.

Q. Were you never at the Ojo del Espiritu Santo?

A. I passed there; yet I don't remember.

Q. You didn't stop?

A. Yes; I stopped, but there was nothing.

Q. How long did you stop there?

A. I don't remember how many years.

100 Q. Did you remain there at the Ojo del Espiritu Santo more than an hour?

A. Yes; when I passed there I stopped a short time.

Q. Where do the people of Santa Ana pasture their animals?

A. Within the boundaries, within the land of the pasturage.

Q. Of their league? Do they not pasture their lands within their own league?

A. Yes, sir; they pasture outside, toward the west.

Q. Does the land lie immediately west of the Pueblo of Santa Ana?

A. (No reply.)

Q. How far do the people of the Pueblo of Santa Ana go away from the church to pasture them?

A. I don't know how many leagues.

Q. They keep them right close to the league, don't they?

A. Yes, sir.

Q. They keep them in sight so that they can watch them and prevent the Navajo Indians from driving them off?

A. Yes.

Q. Then they never took them away more than three or four miles from the pueblo, did they?

A. No.

Q. That has been the way they have done ever since you have known them, is it?

A. I think so.

Q. And that is the same way that the towns of Jemez and Zia do, isn't it?

A. Yes.

Q. Who told you to say that the old people had told the young people what was the name of the grant, of the grant for pasturage?

A. The elders.

Q. Who told you to say that the elders said so?

A. The elders of the Zia, Jemez, and Santa Ana.

101 Q. When were you ever present in any council of Zia, Jemez, and Santa Ana?

A. No; when I grew up into manhood.

Q. How long since you were present at any council of Santa Ana when anything was said about this grant?

A. I don't remember that, sir.

Q. How old were you at that time?

A. I don't remember.

Q. Do you know where the Ventana is?

A. Yes.

Q. Where is it?

A. To the north.

Q. How far is it from the Vado de Piedra?

A. It is inside of the boundary.

Q. How far are those two places apart—the Vado de Piedra and the Ventana?

A. The Ojo del Espiritu Santo.

Q. Last question repeated to witness and interpreter allowed to explain.

A. I don't remember.

Q. How long does it take you to go on horseback from the Ventana to the Vado de Piedra?

A. I don't know, sir. I don't know that. I have never passed there.

Q. How long does it take you to go from the Pueblo of Jemez to the Vado de Piedra?

A. Neither.

Q. Do you know whether the Navajos have ever been hostile to the Pueblos?

A. Yes, sir.

Q. When were they hostile?

A. It is at the time when they had war.

Q. Do you know when the Navajos were sent to the Bosque Redondo?

A. Yes, sir.

102 Q. Were they always hostile to the Pueblos before that time?

A. No, sir.

Q. Were they hostile before that time?

A. No, sir.

Q. Didn't the Navajo Indians ever steal the animals of the pueblo?

A. Before.

Q. When?

A. At the time when they were at war.

Q. Was that before the American troops came here or afterwards?

A. Afterwards.

Q. You don't remember anything about them before the American troops came here, do you?

A. No, sir.

Q. Were they at war after the American troops came in here with the Pueblos of Zia, Santa Ana, and Jemez?

A. Yes, sir.

Q. And the Pueblos kept their animals close to the pueblo, didn't they, to protect them against the Navajos?

A. Yes, sir.

Re-examination by Mr. HOWARD :

Q. Do you know how the Bacas, that you have been asked about, came to live at the Ojo del Espiritu Santo?

A. No, sir.

Q. When did you first know of their being there?

A. I don't remember. They were already there when I was a man.

Q. Did you ever hear from any one how they came there?

A. No, sir.

Q. Did you ever hear of Tomas Cabeza de Baca?

A. No, sir.

Q. Who was the first Baca that you ever heard of being at the Espiritu Santo?

A. Those who are there now.

Adjourned until tomorrow morning at ten o'clock.

103

SATURDAY MORNING, August 5, 1893.

Trial resumed.

Mr. HOWARD: I offer in evidence testimony of these witnesses, taken before the surveyor general, Juan Casados and Jose Rumoldo Casados.

JOSE R. YEBO, sworn, testified on behalf of plaintiffs in Spanish, as follows:

Examination by Mr. HOWARD :

Q. What is your name?

A. Jose R. Yebo.

Q. Where do you reside?

A. At the Pueblo of Jemez.

Q. About how old are you?

A. I do not know how old I am.

Q. More or less, about how old are you?

A. I have said I do not know how old I am.

Q. Are you of age?

A. Probably.

Q. Do you occupy an official position in the Pueblo of Jemez?

A. Yes, sir; I am governor of the Pueblo of Jemez.

Q. What do you call this claim of land that you have before this court?

A. It is the grant del Pasteo, which was given to us by the King of Mexico.

Q. Has the Pueblo of Jemez any animals?

A. Yes.

Q. Where do they pasture these animals?

A. We pasture inside of the league and outside of the league up to the Ventana and down to the Rio Puerco, to the Vallito.

Q. How long have they done that, that you know of?

A. I do not know. It is as far back at the time when I was a boy.

104 Q. Did your father have any and the fathers of the present generation of the Pueblos of Jemez have any stock?

Mr. CATRON: Objected to, as it has not been shown that he knows or how he got his knowledge.

By the COURT: Objection overruled.

A. Yes, sir.

Q. Did they pasture their stock? Where did they pasture their stock?

A. They pastured on the Rio Puerco as far as the Vallito.

Q. How do you know that they pastured their stock there?

A. Because my grandfather said they had pastured there.

Mr. CATRON: I object to the answer and ask to have it stricken out.

By the COURT: The answer will be stricken out.

Q. How do you people of the pueblos learn and know what has been done in your pueblo in the past?

A. Because our elders taught — to us as we are growing up. That is the reason why we learn this from our elders.

Cross-examination by Mr. CATRON:

Q. Do you not remember how old you are?

A. No, sir.

Q. Do you know Jose Miguel Vigil?

A. Yes, sir.

Q. Which is the older, you or Jose Miguel Vigil?

A. Jose Miguel Vigil.

Q. How much older is he than you?

A. I do not know how much older is he than I am.

Q. Well, when you were a little boy about seven or eight years old he was a grown-up man, wasn't he?

A. Yes; he was already a man.

Q. He is at least twenty years older than you?

A. Yes; probably so.

Q. About what age were you when you can first remember facts?

A. I do not know.

105 Q. Do you remember when you were ten years of age?

A. No, sir.

Q. Can you remember anything that took place when you were twelve years of age?

A. No, sir.

Q. Can you remember anything that took place when you were twenty years of age?

A. No, sir.

Q. You are not more than fifty years of age now?

A. I do not know; I do not know all this.

Q. How many men can you remember have been governors of the Pueblo of Jemez, commencing with yourself and going back?

A. I do not remember; I do not know how many.

Q. Are you acquainted with the Navajo Indians?

A. Yes; I know the Navajos.

Q. How far is it from the pueblo west to the Rio Puerco?

A. I don't know.

Q. Weren't the Navajo Indians around the Puerco river very frequently?

A. I don't know all these things.

Q. Do you remember when the Navajo Indians were taken from their reservation and taken to the Bosque Redondo?

A. No.

Q. Do you remember the last time when the Navajo Indians were at war with the Mexicans and other people?

A. No, sir; I don't remember.

Q. Did you ever see an Navajo Indian in your life?

A. Yes.

Q. Do you know the Navajos have been enemies of the Pueblos and carried off their stock and animals?

A. No.

Q. They have not been friendly to the Pueblos, have they?

A. Yes; they were always.

106 Q. Did you ever hear of their stealing horses from the Indians of Jemez, Zia, and Santa Ana?

A. I do not know these things.

Q. Is there anybody living on the land between the league of the Pueblo of Jemez and the Rio Puerco?

A. Yes; there is where we have our pasture and where Diego Baca lives.

Q. How long has Diego Baca been living there?

A. I do not know how much it is.

Q. Has Diego Baca been living there ever since you can remember?

A. Yes, sir.

Q. Have you ever been to the place where he lives?

A. Yes; because we have our horses there, and I was wont to go there.

Q. Do you keep your horses at the Ojo del Espiritu Santo?

A. Yes; we herd our horses there.

Q. How close to the Ojo del Espiritu Santo do you herd your horses?

A. To the spring; we herd our horses and our cows all over that place.

Q. How close to the spring do you herd them?

A. I don't know.

Q. Isn't it true that Diego Baca has possession of that spring?

A. I don't know what Diego Baca has; I know what our fathers told us, and that is all I know.

Q. Who told you to know that?

A. My fathers and grandfathers.

Q. Who told you to say that when you got here?

A. Myself.

Q. Have you talked with this gentleman (Mr. Howard) since you have been summoned as a witness?

A. No, sir.

Q. Have you never seen him before until this morning?

A. No, sir.

Q. Didn't you talk with him yesterday on the streets as
107 you were going down from this court-house?

A. No, sir.

Q. Didn't he tell you to say when you come on the stand that your ancestors told you these things?

A. No, sir.

Q. Didn't any one else tell you to say that?

A. No; nobody.

Q. Have you ever told anybody what you were going to testify to—what you knew—before you were sworn?

A. No.

Q. Now, tell me if it is not true that Diego Baca has possession of that spring of the Ojo del Espiritu Santo.

A. I do not know that.

Q. Doesn't he live there?

A. He lives there.

Q. Doesn't he use the water?

A. Yes; he uses it.

Q. And doesn't he keep the stock of other people away from it?

A. I do not know that.

Q. How close is the spring to his house?

A. I do not know that.

Q. How far does the water run away from the spring?

A. I do not know how much.

Q. Does it run more than four hundred varas?

A. I don't know.

Q. Have you been there frequently?

A. No.

Q. Isn't it true that the Rio Puerco is dry almost all the year?

A. Yes; that is true always.

Q. No water runs in the Rio Puerco for nine or ten months
108 in the year?

A. I don't know that I never traveled that way.

Q. You have never been to the Rio Puerco, have you?

A. No, sir.

Q. Do you know of any other water or spring on this land besides the Ojo del Espiritu Santo?

A. No, sir.

Q. Do you know of any other stream of water or place where water runs on that land?

A. No; but I don't know how I can state that I do not know.

Q. You can state that you don't know it. Isn't it true that ever since you have known that land everybody has pastured their horses, cattle, and sheep on it?

A. We pasture all our horses and our cows there.

Q. And all the Mexicans do so too, don't they?

A. Yes, sir.

Q. Nobody has ever been deprived of the right to go and pasture their animals there, have they?

A. We ourselves pasture there; that's all I know.

Q. Haven't you seen anybody else have animals there?

A. No; we ourselves—the three pueblos—are the only ones that pasture there.

Q. Do you know that?

A. Yes, sir.

Q. Don't Diego Baca pasture his animals there?

A. He pastures there because he lives there.

Q. Don't other people who live there or not far off pasture their animals?

A. I don't know that.

109 Q. Don't the people of Canon de San Diego pasture there animals there?

A. Yes.

Q. Don't the people of Bernalillo pasture their animals there?

A. I don't know, sir.

Q. Don't the people of Pena Blanca pasture their animals there?

A. I don't know that.

Q. You don't know much about this at all, do you?

A. No.

Q. Do you know A. Perea?

A. Yes.

Q. Hasn't he a cattle ranch on this very land?

A. I don't know.

Q. Ask him if A. Perea don't pasture his cattle on that ranch.

A. I don't know.

Q. Why don't you know?

A. Because I don't know; because I never traveled.

Q. You have never gone over this land very much, have you?

A. No, sir.

Q. You always confine yourself to the limits of the league, don't you?

A. A person cannot state what he does not know.

Q. Do you know Jose Baca?

A. Yes.

Q. Hasn't he got a ranch on this same property?

A. I don't think he has.

Q. Doesn't he pasture his animals on this property—sheep, horses, and cattle?

A. I don't know.

Q. Do you know Francisco Armijo?

110 A. No.

Q. Hasn't a man by the name of Francisco Armijo also a ranch on this property?

A. I don't know.

Q. Do you know a place called San Yasidro?

A. Yes.

Q. Don't the people of San Yasidro pasture horses, cattle, and sheep on this property, some of them?

A. Yes; the people of San Yasidro pasture in that direction also.

Q. What is the custom in your pueblo as to your horses and cattle—do you not keep them herded?

A. Yes; we herd them and we have a corral at the place called Penasco.

Q. Where is the place called Penasco?

A. On the other side of the Pueblo of Jemez.

Q. How far from the Pueblo of Jemez?

A. A person who goes on horseback, it takes about half a day to go there.

Q. Have you ever been there?

A. Yes, sir.

Q. What kind of a corral is it?

A. Made of cedar posts.

Q. How long has that corral been there?

A. It is a long time, but it is no corral now; it is all burned; it is only the Penasco.

Q. Do you know the party who made that corral?

A. We have cows there.

Q. How long since that corral has been burned up?

A. Probably it is some time ago. I don't know the time.

111 Q. Since that time you have not kept your cattle there, have you?

A. We have them there now.

Q. Do you drive them home to the pueblo every night?

A. No; we have a ranch near the Penasco.

Q. If the corral is burned up, you haven't got it any more, have you?

A. Yes; we have it there; no; we don't have them there, because the corral is burnt.

Q. Where did you get water for those animals?

A. There at that rock of the Penasco, where the water runs.

Q. Where does that water come from?

A. From the mountain itself.

Q. Now, doesn't that water come down from the Ojo del Espiritu Santo spring?

A. No.

Q. Then where does it come from?

A. From the Mountain Penasco. It runs to that arroya.

Q. Isn't that the very place where A. Perea has his ranch?

A. No.

Q. Where does he get water for his animals?

A. I don't know.

Q. How long since you were at the Penasco Blanco?

A. It is some time. I don't go there now.

Q. Nobody else from the pueblo goes there now, do they?

A. Yes; they keep some horses there and cows.

Q. Isn't it ten years since you were there?

A. I don't know how many years it is.

Q. How do you know they keep horses there if you haven't been there?

A. From what we hear, because we let the horses there.

112 Q. Do you keep all your horses there?

A. Yes, sir.

Q. Now?

A. Yes, sir.

Q. What do you do when you want horses?

A. We go and get them when we need them.

Q. How far is the place where he says they had that corral from the Ojo del Espiritu Santo?

A. It is a little far from that house.

Q. How long would it take you to go on horseback from the spring down to the corral?

A. Probably half a day.

Q. How far is the place from the church of the Pueblo of Jemez?

A. A person starts from Jemez—it would probably take him a half a day to reach the corral.

Q. Is the corral near the Arroya Salado?

A. No; it is near the Penasco.

Q. Do you know where the Arroya Salado is?

A. Yes, sir.

Q. Which direction is the corral that you speak of from the Arroya Salado?

A. Above the Penasco; the Arroya Salado is below.

Q. How far is the corral from the south end of the Jemez mountains?

A. The corral is on the west side of the Jemez.

Q. Do you mean in the Jemez valley?

A. Yes; on that side.

Q. Do you know a mountain down there called Sierra Blanca?

A. Yes.

113 Q. Do you know the place called the Mesa Blanca?

A. No; I don't know the place called the Mesa Blanca.

Q. Is there an arroyo that goes through this Penasco Blanco?

A. No.

Q. In what does the water run?

A. Below.

Q. In what does the water run in, the arroyo, or does it run on level ground?

A. It runs in the arroyo.

Q. Into what does that arroyo empty?

A. The water runs from the mountain below and empties into the Rio Salada.

Q. How far is the place of the corral that you speak of from the place where that arroyo empties into the Rio Salada?

A. It is not far.

Q. Is it a mile?

A. I don't know that.

Q. What is that arroyo called?

A. Arroyo de Penasco Blanco.

Witness excused.

Mr. EARLE: I have a part of the record in this case marked "T T," identified by the stenographer as part of the files of the surveyor general's office, and I call Mr. Tipton as a witness.

WILL. M. TIPTON, sworn on behalf of plaintiffs, testified as follows:

Examination by Mr. EARLE:

Q. Do you know T. B. Catron?

A. Yes, sir.

Q. Did you ever see him write?

114 A. Yes; I saw him write here yesterday afternoon and today.

Q. Are you familiar with his handwriting?

A. I believe I am.

Q. Look at that (showing witness document referred to) and see if it is his signature.

A. This looks like his signature to me. I believe it to be his signature.

Q. Are you familiar with the handwriting of General Proudfit?

A. Yes; I know Mr. Proudfit's handwriting.

Q. Look at this paper (showing witness letter) and state if that is his signature.

A. I think that is the signature of Mr. Proudfit.

Mr. EARLE: I offer these two papers in evidence.

Mr. CATRON: I object to the introduction of this letter, as it is a matter personal to myself and my own and has nothing to do with the title of this property.

By the COURT: No ruling at present.

Here plaintiffs rested their case.

On behalf of the Government Mr. Reynolds said:

In the Espiritu Santo grant, if the court please, which has been patented, we offer in evidence all the papers in that case, together with a report of the surveyor general certified and the act of confirmation of the grant—all the papers in the surveyor general's office in that claim—reported No. 44, file No. 36, surveyor general's office, known as the case of Tomas Cabeza de Baca.

Mr. EARLE: I object to the introduction of this testimony because the petitioners in this case are in nowise bound or
115 effected by the evidence in the record offered by the Government's counsel, for it is *res inter alios acta*, and because the petitioners are not bound by it, the same not being *res adjudicata*, and for the further reason that those papers were not original files in the surveyor general's office.

Mr. REYNOLDS: I also offer in evidence all the papers on file in the surveyor general's office reported No. 24, known as the town of San Ysidro grant, together with the act of Congress confirming the grant.

Mr. EARLE: I might suggest to counsel that the introduction of

the act of Congress is unnecessary, as the court will take judicial notice of acts of Congress.

Mr. REYNOLDS: It has been held that private acts must appear in the record and—

By the COURT: No objections being raised by the plaintiffs, the acts of Congress need not be introduced.

Mr. EARLE: I object to the introduction of this testimony for the same reasons as stated in my objection to the introduction of the paper in the Espiritu Santo case.

Mr. REYNOLDS: I offer in evidence all the files in the surveyor general's office in the case of the Canon de San Diego grant, reported No. 25.

Mr. EARLE: I object to it for the reason stated in my former objection.

WILL. M. TIPTON, heretofore sworn as a witness, testified as follows:

Examination by Mr. REYNOLDS:

Q. Is that one of the official maps of the surveyor general's office (Zia, Santa Ana, and Jemez map "T T")?

A. Yes, sir.

116 Mr. REYNOLDS: I offer it in evidence.

Q. I will get you to take that survey of what is known as the Indian pasture grant, now on file, and explain to the court the conflict with the Espiritu Santo, San Ysidro, and the Canon de San Diego grant.

Mr. EARLE: I object. It appears from the records entered the grant to the three pueblos is senior in date to the grants concerning which the witness has been interrogated, and therefore the testimony called for is incompetent, irrelevant, and immaterial.

By the COURT: Admitted, subject to the objection.

A. This map shows a conflict between the grant to the Pueblos of Zia, Santa Ana, and Jemez and the Canon de San Diego grant number 25, to the extent of about eleven and one-half miles in length from north to south and about five miles in width. There is a conflict also shown with the Espiritu Santo grant, number 44, to the extent of the entire area of the latter grant. There is a conflict also with the San Ysidro, reported number 24, of a tract something over six miles in length from east to west and about a mile and a half in width from north to south; also a conflict with the Antonio Baca grant, number 101, reported number, is shown, the extent of which it is impossible to estimate on account of the irregularity of the lines of the survey. This conflict is caused by the western boundary of the grant now on trial being surveyed along the edge of the Puercio river, while the eastern boundary of the Antonio Baca is surveyed along the edge of the Mesa Prieta, which mesa lies east of the Puerto river.

Witness excused.

117 THOMAS B. CATRON, sword, testified on behalf of the defendants as follows:

Examination by Mr. REYNOLDS:

Q. Where do you reside?

A. Santa Fé, New Mexico.

Q. What is your occupation?

A. Attorney-at-law.

Q. I will get you to look at that letter introduced by the plaintiffs, dated October —, 1873, directed to Surveyor General Proudfit, and state what it is.

A. This letter, which I have examined, is entirely in my handwriting. At the time this letter was written I was attorney of the United States for the Territory of New Mexico. Some time before it was written Attorney General Williams—

Mr. EARLE: I object to his making any statement as to what occurred between himself and Attorney General Williams because it is the practice of the Department of Justice, without exception, to put all such things in writing, and if any such orders were received he has or should have it or should be able to get it or a copy of the same from his successor in office.

By the COURT: The witness may proceed.

A. Attorney General Williams informed me that he had been requested to furnish counsel for the Pueblo Indians in matters pertaining to their lands, as complaints were being made that there were a great many settlers occupying and settled upon their lands. I was directed to file complaints, as such United States attorney, against all such squatters and occupants and to send him my account for my services. Under that direction I commenced

118 one hundred and fifty suits against squatters claiming and occupying lands. Amongst them I commenced suits against those who were occupying lands belonging to the Jemez Indians, in what would be called their league. Many of these cases were prosecuted and decided in favor of the Indians; others where parties abandoned them were dismissed. About the time this letter was written the Indian agent informed me of the facts set out in this letter; stated that he had been directed by the department—the agent, I think, was Doctor Thomas—that if he needed any assistance in an official capacity in looking out for the interests of the Indians to apply to me to assist them and give them advice. He informed me further that he understood that the surveyor general of the Territory of New Mexico then had under consideration for confirmation this land of the Pueblos of Santa Ana, Zia, and Jemez; that he, the surveyor general, had made the statement that if the Bacas, to whom the grant to the spring had been made, would sell their lands he would disapprove this other grant. I told him I didn't believe the surveyor general said such a thing, but that I would write a letter to Mr. Proudfit calling his attention to the rumor, and calling his attention to the fact that he must either confirm or dismiss the grant; he had no right to inquire as between

to grants; that his only inquiry was as to whether the grant papers before him were genuine and should be confirmed without reference to any outside matters, and I wrote this letter according to that statement to the surveyor general, Proudfit. I wrote this letter as United States attorney for the Territory of New Mexico to the the surveyor general of New Mexico to call his attention to what had been called to my attention by the Pueblo Indian agent, as my statements in this letter show, and as to what his duty was in the premises, and these suggestions were apparently received by him in an official way, because he endorsed on the margin of this letter that it was received from the United States attorney.

Mr. EARLE: Objected to as argumentative.

A. I never was employed in this case to prosecute it before the surveyor general, but simply to call the attention of the surveyor general as to what I had heard with reference to the matter and as to what was his duty in the premises, in my judgement.

Cross-examination by Mr. EARLE:

Q. You wrote this letter as attorney for the United States. Why did you not subscribe yourself officially?

A. I have stated in the body of that letter that it was under instructions from the Attorney General, and did so, probably, and on that account and the fact he was familiar with and knew that I was United States attorney it must have been a mere oversight.

Q. Did you send a copy of the letter from the Attorney General to the Indian agent?

A. I don't remember that I sent him any copy; the Attorney General sent the letter to me, in which he stated that he had been requested to furnish counsel for the Pueblo Indians, but I don't remember now whether I sent a copy or not; that letter was burned also at the time my office was destroyed.

Q. Did you have any correspondence with the Pueblo Indians with relation to this tract?

120 A. None except with the Indian agent.

Q. Do you remember who he was?

A. Doctor Thomas or his predecessor in office.

Q. Did you understand the conversation to mean that this Indian agent requested you to specifically write this letter?

A. He requested me to correspond with the surveyor general on the subject of these lands, and he said to me in our conversation that I state what was the duty of the surveyor general in my opinion, and asking me to call his attention to this statement made with reference to what he had said and to take such other steps as I thought proper.

Q. The Indian agent told you this rumor; do you remember where you were when he told you?

A. I think I was in Albuquerque.

Q. I notice that in this letter you state that, I have just this

minute been informed that you have promised Don Tomas C. de Baca or some others that if the Bacas would sell the grant of the Ojo del Espiritu Santo that you will reject the grant of the Indians. Mr. Tom Baca is the author of the promise.

A. Probably I may have been informed by him also; I think my recollection is that the Indian agent came to me first, and that Mr. Baca was in Albuquerque and I called him in and asked him about it.

Q. Who do you represent in this present case?

A. I represent grants owned by Mr. Otero, myself, and Mr. Gildersleeve and various other people. I am one of the parties defendant made so by the petition.

Q. From whom do you derive your title?

A. Tomas Cabeza de Baca.

Q. The man who gave you this information?

A. No, sir; he was either a grandson or a great-grandson.

121 Q. Do these others derive their title from Cabeza de Baca?

A. Mr. Perea, I think, does.

Q. Did you ever do anything else in relation to the three pueblos, in relation to this particular grant, under this letter of instructions that you received?

A. Not that I know of,

Court here adjourned to Monday, August 7th, 1893.

On Monday morning trial resumed.

The court of its own motion ordered stricken from the record and from the files the letter and introduction thereof written by T. B. Catron to the surveyor general of this Territory and part of files marked "T T" in said office, dated eighth of October, 1873, and the letter and introduction thereof of said surveyor general to said T. B. Catron in reply thereto, part of the same files, and all the testimony in relation thereto, as being immaterial and having no tendency to throw any light on the subject of the validity or invalidity of petitioners' title.

To which ruling of the court petitioners, by counsel, took an exception; which was allowed by the court.

Mr. REYNOLDS: We offer in evidence from the surveyor general's office papers in the case of the Pueblos of Jemez, reported number "A," which is for their pueblo grant or league grant.

Also papers for the Pueblo of Zia, reported number "O," for their league grant.

Also those for the Pueblo of Santa Ana, reported number "F," for their league grant; and in connection with these I offer in evidence the act of confirmation of these three grants.

I also offer the plats of these three pueblos. They, I suppose, go with confirmation as made by the surveyor general of New Mexico.

122 DIEGO BACA, sworn, testified on behalf of defendants, in Spanish, as follows :

Examination by Mr. CATRON :

Q. What is your name?

A. Diego Baca.

Q. What is your age?

A. I am sixty-nine years old.

Q. Where do you reside?

A. Ojo del Espiritu Santo.

Q. How long have you resided there?

A. From March in 1869.

Q. Where did you reside before you went there?

A. At Pena Blanca.

Q. How far is that place from Espiritu Santo springs?

A. I believe it is fifty miles distant, more or less.

Q. How long have you known the spring called the Ojo del Espiritu Santo?

A. Since the year '42; I was very small.

Q. How did you happen to know it at that time?

A. My father was appointed to make peace with the Navajos, and, having taken sick, my uncle was appointed as commissioner in his place, and he asked him to name me as an assistant.

Q. Where did you go and what did you do?

A. We went to Mestas' house, at the Rio Puerco.

Q. Where was that from the Ojo del Espiritu Santo?

A. To the west.

Q. How long did you remain there on that occasion?

A. We stayed there at the house of Mestas, waiting for the Navajos, and on the third day they came.

123 Q. After they came how long did you remain?

A. No, sir; we came back.

Q. While you were there did you have any opportunity of seeing the tract of land that surrounds the spring of the Ojo del Espiritu Santo known as the Ojo del Espiritu Santo grant?

A. No, sir; we did not see; we slept there at the spring, and the next day we went to the house of Mestas and waited for the Navajos.

Q. Was there anybody occupying the spring at the time you were there?

A. No, sir; there was not.

Q. At that time were there any animals—horses, cattle, sheep—on or being pastured on the land?

A. No; neither cattle, sheep, nor horses, because the Navajos did not allow it.

Q. If you know, state where the Jemez Pueblo Indians were keeping their horses, their cattle, and their sheep.

A. That I know about a year afterwards that they kept their horses at the Mesa de Vallecito.

Q. At the time you were there, in 1842, immediately prior to the time you went, were the Navajos at peace or war?

A. They were then in war and then made peace.

Q. During the time the Navajos were at war how far would they go off their range, if you know?

A. They went all over the Territory.

Q. How often after 1842 did you see that tract of land?

A. (No reply.)

Q. Did you or did you not after 1842 see that land?

124 A. No; I did not return.

Q. How soon after 1842 did you return, the next time?

A. I did not return to the spring until in '69.

Q. Did you return to any other place in the neighborhood?

A. I passed through San Ysidro and the Pueblo of Zia and Pueblo of Zuni and Moqui from the year '52.

Q. Where are the Pueblos of Zuni and Moqui?

A. To the west.

Q. From the Puerco?

A. Yes, sir.

Q. When you went through those pueblos did you or did you not pass through this land?

A. Where?

Q. The land of the spring of the Espiritu Santo grant, of the Zia, Santa Ana, and Jemez.

A. I said I passed over two different roads, sometimes through Zia and sometimes through San Ysidro.

Q. At the time you passed through there state whether or not the land lying between the Puerco river and the lands belonging to the Zia and Jemez Indians were occupied.

A. No, sir.

Q. If it had been occupied with sheep and horses would you or would you not have observed it as you went along?

A. Yes, sir.

Q. Do you know the point called the Ventana?

A. Yes, sir.

Q. Do you know a point on the Rio Puerco called the Vado de Piedra?

A. Yes, sir.

125 Q. Do you know the Rio Puerco?

A. Yes, sir.

Q. Do you know where the western boundary of the league of the Jemez and Zia Indians is?

A. No; I do not.

Q. If it is one league from the church in each one of those places, then do you know where it is?

A. The Vado de Piedra is very far.

Q. Do you know the country lying one league west from the churches of Zia and Jemez?

A. Yes; I do.

Q. Since you have been residing along that Espiritu Santo spring who, if any one, has occupied the lands between the league—from the league of the Jemez and Zia Indians to the Rio Puerco and from the Ventana to the Vado de Piedra?

A. Everybody—all the inhabitants who would be pleased to do so; and they pastured all their stock and have stock breedings there.

Q. After the Navajos made peace, in 1842, during the time that you knew that land, do you know whether it was ever occupied by any one up to the time you went to reside there?

A. No, sir; by no one.

Q. Do you know whether or not any one ever pastured, herded, and drove their stock over that property during that time?

A. Yes; all the owners of stock at that time went there, but they would immediately abandon the place on account of the Navajos.

Q. Did you know up to what time the Navajos remained hostile—up to the last time they were at war?

A. They were hostile and making raids up to the time the
126 American troops came in. Then they began to behave themselves.

Q. Do you remember when they were taken to the Bosque Redondo?

A. I don't know when, but I know they were taken out there.

Q. How long was it before you went to the Espiritu Santo to live were they taken to the Bosque Redondo?

A. I think about four or five years before that, more or less.

Q. How were they as to being at peace or war up to the time they were taken to the Bosque Redondo?

A. At the time they were taken to the Bosque Redondo they were first at peace and then at war.

Q. Did you know Luis Maria Cabeza de Baca during his lifetime?

A. I knew him very young.

Q. Were you any relation of his?

A. He was my grandfather.

Q. Do you know whether or not he is living or dead?

A. He is dead.

Q. Did he leave any children?

A. Yes.

Q. How many?

A. He had eighteen sons.

Q. State their names, can you, as far as you remember them?

A. Antonio Baca, Juan Antonio Baca, Rosa Baca——

Q. Was Rosa Baca married?

A. Yes, sir; married to Sebastian Salas.

A. —Jose Baca, Domingo Baca, Guadalupe Baca——

Q. Was she married?

A. Yes, sir; married to Santiago Trujillo.

A. —Miguel Baca——

Q. What relation was Miguel Baca to you?

127 A. He was my father.

Q. How many children did Miguel have?

A. He had six.

Q. Give their names.

A. Quintana Baca, Diego Baca, Romando Baca, Paulina Baca——

Q. Was Paulina married?

A. She was married.

Q. To whom?

A. Juan Jose Montoya, and afterwards to Edgar.

A. —Guadalupe Baca—

Q. Was she married?

A. The wife of Jesus Maria Leyva.

A. —Marlina Baca—

Q. Was she married?

A. She was married to Dianicio Montoya.

A. —and my father, Miguel Baca.

Q. Now, go on and state who were the other children of Jose Maria Cabeza de Baca.

A. Ramon Baca, Luis Baca, Prudencio Baca, Mateo Baca, Maria Josefa Baca—

Q. Was she married?

A. Yes, sir; to Juan Luis Montoya.

A. —Luz Baca—

Q. Was he married?

A. He was not.

A. —Jesus Baca—

Q. How many Jesus' were there?

A. There were two.

Q. Were they of the same mother?

128 A. The first one was called Jesus Baca y Lucero. This was the first one.

Q. Who else were there?

A. Juana Pablo Baca—

Q. Was she married?

A. Yes, sir; to Jose Garcia.

A. —Felipe Baca, Jesus Baca y Lucero, Josefa Baca—

Q. Were there two by the name of Domingo or not?

A. No.

Q. Was there one by the name of Manuel Baca?

A. Yes.

Q. Antonio Baca, the first one, living or dead?

A. He is dead.

Q. Did he leave any children?

A. Yes.

Q. State their names.

A. He only left one—Juan Manuel Baca.

Q. Is he living?

A. No; he is dead.

Q. Did he leave any children?

A. Yes, sir.

Q. Who were they? State them.

A. Jose Baca, Preciliano Baca.

Q. Is Juan Antonio Baca living or dead—the second son?

A. He is dead.

Q. How long has he been dead?

A. He died in '33.

Q. Did he leave any children?

A. Yes.

129 Q. If you know them, state who they were.

A. Jesus Baca, Encarna Baca, Tomas Baca, Cesaria Baca, Domingo Baca, Jose Baca, Josefa Baca, Guadalupe Baca, Quirino Baca, Altagracia Baca, Nicolasa Baca, Trinidad Baca—

Q. Was she married?

A. Yes, sir; to Fernando Delgado.

Q. Did they have any children?

A. Yes; Tomacito Baca.

Mr. EARLE: I can't see the necessity for all this testimony nor the object of it.

Mr. CATRON: I do this to trace down the title of myself and adverse claimants here, defendants. These parties—most of them, with some others—I have obtained my title through different mesne conveyances—

Mr. EARLE: I object to all this testimony as incompetent, irrelevant, and immaterial, for the reason that under the grant to the petitioners they have established and introduced the act of juridical possession. There has been no denouncement of the grant and therefore no foundation has been laid for this testimony.

By the COURT: Admitted subject to the objection.

Witness excused.

FRANCISCO ARCHIBEQUE, sworn, testified on behalf of defendants, in Spanish, as follows:

Examination by Mr. CATRON:

Q. What is your full name?

A. Francisco Archibeque.

130 Q. How old are you?

A. Sixty-five years old.

Q. Where do you reside?

A. At Algodones.

Q. Where is Algodones—in what county?

A. Bernalillo county, New Mexico.

Q. Do you know where the Puerco river is?

A. Yes, sir.

Q. Do you know where the Pueblos of Zia, Santa Ana, and Jemez are?

A. Yes, sir.

Q. Do you know a place in that section of the country known as the Ventana?

A. Yes, sir.

Q. Do you know where the Vado de Piedra is on the Rio Puerco?

A. Yes, sir.

Q. Are you acquainted with that stretch of country extending to the Ventana on the north to the Vado de Piedra on the south?

A. Yes, sir.

Q. And do you know the country lying between the Pueblo of Jemez and Zia and the Puerco river?

A. Yes.

Q. Do you know the place called the Ojo del Espiritu Santo?

A. Yes.

Q. What age were you when you first knew that land?

A. I was about twelve or thirteen when I was with my father's sheep.

Q. What were you doing with the sheep?

A. I was herding them.

Q. Where?

131 A. All over that ground, from the Rio Puerco on this side to the other side, when the Indians would permit it and allow it.

Q. On what side of the Rio Puerco did you generally pasture the sheep?

A. On this side most of the time.

Q. Do you mean the east side or the west side?

A. From the Rio Puerco east.

Q. What length of time, from the time you were ten or twelve years of age, did you pasture the sheep on the lands lying between the Rio Puerco and the Pueblos of Jemez and Zia?

A. All the time, except sometimes when the Indians were hostile—all the time up to the month of October, last year.

Q. When you first went there, at the time you were twelve or thirteen years of age, state who, if any one, was occupying the land from the Ventana to the Vado de Piedra and from the Puerco river to the Pueblos of Jemez and Zia.

A. There were some parties who would go there with their cows, sheep, and cattle, but I cannot say that anybody was there permanently established.

Q. Who were these people—Mexicans or Indians?

A. Mexicans.

Q. Where did the Indians of Jemez, Zia, and Santa Ana pasture their horses, sheep, and stock at that time, if you know?

A. The Indians from Zia would reach as far up as the Canada de los Milpas sometimes, and they would occasionally have some farms, and then they would turn back to the Rincones Zia.

Q. Where is the Rincones Zia with reference to the pueblo?

A. They are on the south side of the pueblo, near the Ceja.

Q. Where did the Jemez Indians at that time pasture their horses and cattle?

132 A. I would see them sometimes up at the place that is called the Penasco—some loose animals—but I never saw any ranch.

Q. Do you know where the place called the Penasco is?

A. Yes, sir.

Q. Have they ever had a ranch or corral there to your acquaintance?

A. There are ranches for sheep-breeding belonging to Jesus Trujillo.

Q. Did you see the Indians of the Pueblo of Zia, Santa Ana, and Jemez have any ranch there?

A. I did not see it.

Q. Did you frequently see that place?

A. Yes, sir; almost every year.

Q. Where did the Indians of Jemez generally keep their cattle?

A. To the Chihuahua, on the mountains. The Navajos stole their horses there once.

Q. What direction from the pueblo?

A. To the north.

Q. Is that their general pasturing place?

A. I was wont to see their horses there.

Q. Ask him if he saw them there frequently or not.

A. Many times.

Q. Where did you see them most of the time?

A. There at the Chihuahua ranch, but when the Indians were hostile they were northeast and a little closer at the Penasco.

Q. Then they only allowed them to reach up to the Penasco when the Indians were hostile?

Mr. EARLE: Objected to as incompetent and leading.

By the COURT: Objection sustained.

133 Q. Where do the Indians of Santa Ana pasture their horses and cattle?

A. On the Mesa. On the Pueblo Mesa on the north to the Ceja on that side also.

Q. On the north side of what?

A. On the north side.

Q. North side of the pueblo?

A. Yes, sir.

Q. What pueblo lies furthest east of these three?

A. Santa Ana.

Q. Did the Santa Ana Pueblos ever pasture their horses as far west as the Puerco river?

Mr. EARLE: I object to the question as leading.

A. No; I never saw them.

Q. Do you know whether or not any one was ever prohibited or disturbed from pasturing their animals on the land lying from the Zia and Jemez pueblo to the Puerco river and from the Ventana to the Vado de Piedra?

A. No, sir.

Q. Do you say you don't know or that they were not prohibited?

A. I was never permitted in the land except from the Canada de los Milpas to the river on this side.

Q. Did you or did you not ever hear of anybody else being permitted to its occupation?

A. I never heard it said to the contrary.

Q. To what extent, if you know, do the people occupy those lands during the time you have known them?

A. With sheep, cattle, horses, and burros.

Q. And in what part of the lands did they occupy them?
 134 A. From these places that they went—Bernalillito, Los Pozos, Los Ojito, Cucho, Chapuli, and Espiritu Santo—and those places have been occupied with property, burros, cattle, by many persons.

Q. At these different points what was there to show occupation?

A. Cattle ranches, and there was a house that belonged to Mariano Perea.

Q. Where was that?

A. At Ojito. There was a house at the Espiritu Santo. There was some other houses belonging to persons who went there before, Diego Baca and the after relatives of Diego Baca, Jesus Sandoval, Juanquin Sandoval, and others who I can't remember. They were there before Diego.

Q. How far back did you first see them there?

A. I don't remember.

Q. How old were you when you first saw them?

A. I don't remember. I did not pay any attention.

Q. Were you a boy or a grown man?

A. I was a grown man.

Q. What were they doing there?

A. They were settled there. I don't know whether they were all planting or herding their cattle.

Q. Was that at the Penasco?

A. I have not seen any one at the Penasco.

Q. What, if any, improvements have you seen at the above-mentioned places?

A. At Bernalillito another house was built by Don Justine Castillo, and on this side of the Ojitos this man, Jose Baca, has some ranches, and he has been raising sheep there for many years.

135 Those are the ones I have seen there.

Q. Over what section of the country do those people pasture their animals?

A. All over the place. I have seen them from the Ventana to the Vado up to the Navajo also.

Recess taken until 2 o'clock.

2 o'clock.

Trial continued; same witness on the stand.

Direct examination continued by Mr. CATRON:

Q. Do you know a place called Canada de los Milpas?

A. Yes, sir.

Q. Do you know the Arroyo Salada?

A. Yes, sir.

Q. How far is the Canada de los Milpas from the town of Pueblo of Zia?

A. About four or five miles.

Q. In what direction?

A. To the west.

Q. How do the Canada de los Milpas and the Arroyo Salada run with respect to each other?

A. The Canada de los Milpas connects with the arroyo somewhat above.

Q. Above what?

A. Above the Arroyo Salada.

Q. How far is it from the church of the Pueblo of Zia to the point where the two come together?

A. About a league.

Q. Whereabouts are these pieces of land that you state there had been some cultivation in the Arroyo Salada with reference to
136 where the Canada de las Milpas and the Arroyo Salada come together?

A. Somewhat distant to the south.

Q. Is it a long distance or a short distance?

A. A small distance—about two miles.

Q. How much cultivation was there in the Canada de las Milpas?

A. There were some watermelons, muskmelons, pumpkins, and some strips of corn.

Q. How many years did you say it was since you saw that cultivation there?

A. I don't remember how many years.

Q. When was the last time that you saw any there?

A. I do not remember; it is a long time ago.

Q. You know who did that cultivating?

A. Indians of the Zia Pueblo.

Q. You know where the place Canada de Achavarria is?

A. Yes, sir.

Q. Where is it situated with reference to the Vado de Piedra?

A. On the south.

Cross-examination by Mr. HOWARD:

Q. Who prohibited you from going upon this tract of land that you have described between the Canada de las Milpas and the Pueblo of Zia?

A. Those from the Pueblo of Zia.

Witness excused.

SEMON ARCHIBEQUE, sword, testified on behalf of the defendants, in Spanish, as follows:

Examination by Mr. CATRON:

Q. Where do you reside?

A. At Algodones.

137 Q. What is your age?

A. I am fifty-nine years old.

Q. Are you acquainted with the tract of land lying between and extending from the Pueblos of Zia and Jemez to the Puerco river?

A. Yes, sir.

Q. Do you know a place called the Ventana?

A. Yes, sir.

Q. Do you know a place called the Vado de Piedra?

A. Yes, sir.

Q. Do you know the land lying between those different points?

A. Yes.

Q. When did you first know it?

A. In the year '53.

Q. How did you happen to know it then?

A. Herding sheep.

Q. Where—where were you herding sheep?

A. In those places of Ceja del Rio and on both this side and on that side.

Q. How many different years did you herd sheep there?

A. I do not remember the years; some years I herded over there and at other times I herded here.

Q. You herded sheep there in the year 1853?

A. I begun to herd them in those places at that time, and then I knew the place.

Q. How was the land between those places I have mentioned occupied, if it was occupied at all within those places, in the year 1853?

A. It was not occupied; they had stock there and animals.

Q. Whose stock was there?

138 A. Several people from the county of Bernalillo and Algodones.

Q. Were there any places on that tract occupied exclusively by any particular individuals?

Mr. EARLE: Object to the question as leading.

By the COURT: Objection overruled.

A. Not in those lands.

Q. Do you know the arroyo called the Arroyo Salada?

A. Yes, sir.

Q. Do you know a cañada called the Canada de los Milpas?

A. Yes, sir.

Q. Where is the Canada de las Milpas situated from the church of the Pueblo of Zia?

A. On the south side.

Q. How far is it from the church of Zia?

A. I am not certain how far, but it probably is five or five and a half miles from that church.

Q. Into what does the Canada de las Milpas empty?

A. Rio Salada.

Q. On which side the Rio Salada?

A. On the north; it empties to the north.

Q. Has the Arroyo Salada any water in it where the Canada de las Milpas empties?

A. Yes, sir; it runs.

Q. Where is the Canada Penasco or Canada de los Ojitos?

A. (No answer.)

Q. Does it run all the year?

A. Yes; that is salt water.

Q. Is there any water running in the Canada de los Milpas?

A. No, sir.

Q. Is or is not the Canada de las Milpas occupied by any one?

139 A. No, sir; it is not.

Q. Do you know whether it ever has been occupied?

A. Yes; in those times.

Q. In what years?

A. From the year '53 later I have seen it occupied by farms—by cultivation.

Q. When was the last time you saw it occupied by any one?

A. I do not remember the year.

Q. What amount of land was occupied by cultivation there?

A. There were some small strips of land sowed with corn and watermelon.

Q. How close does that land lie to the Arroyo Salada?

A. It is probably a mile and a half.

Q. From the junction?

A. From the junction to the farms.

Q. Do you know the place called the Penasco?

A. Yes, sir.

Q. Did you know it in 1853?

A. Afterwards; yes.

Q. You mean that you did not know it in 1853, but afterwards, or that you knew it in '53 and afterwards?

A. Yes, sir.

Q. Which?

A. That I knew it in '53 and afterwards.

Q. Was anybody occupying that place at that time?

A. No, sir.

Q. Was anybody then or has anybody ever occupied it since that time to your knowledge?

A. Yes, sir; afterwards I saw sheep-lambing ranches there.

140 Q. Who was it that had them there?

A. They were various persons there; a man called Jose Antonio Garcia, from the springs, I knew him there lambing.

Q. Were there any improvements there?

A. No, sir.

Q. When did you first see anybody with their sheep at that place?

A. I do not remember the years. I saw them several years.

Q. During the year that you pastured sheep over this pasture land which you have mentioned do you know where the Indians of Zia, Jemez, and Santa Ana pastured their cattle?

A. Yes, sir.

Q. Where?

A. This place from the Mesita de la Vallecita to the Chihuahua.

Q. Do you know the Canada de Achavarria?

A. I do know the cañada.

Q. Do you know the direction in which it runs?

A. No, sir.

No cross-examination and witness excused.

ESQUIPULA NIETO, sworn, testified on behalf of the defendants, in Spanish, as follows:

Examination by Mr. CATRON:

Q. What is your name?

A. Esquipula Nieto.

Q. What is your age?

A. I understand it to be seventy-two. I was born in the year '22, in the month of March.

Q. Where do you reside?

A. At the Rio Puerco.

Q. How long have you resided there?

141 A. From the year '74 to this date.

Q. Where did you reside before you went to the Rio Puerco?

A. Bernalillito.

Q. Do you know the tract of land extending from the Pueblos of Zia and Jemez to the Puerco river and from the Ventana on the north to the Vado de Piedra on the south?

Q. Yes, sir.

Q. When did you first know that portion of the country?

A. From the time I went upon it, but I did not know the place called the Vado de Piedra when I was very young. When I was very young I knew the Rio Puerco before I knew these other two places, and from '72 to this time I have known them.

Q. When did you first know the Ojo del Espiritu Santo?

A. Three years, as I was at Don Diego's house.

Q. What year or at what age were you when you were at the Mesa Prieta?

A. I was about fourteen or fifteen years.

Q. What were you doing?

A. Herding sheep.

Q. In what direction of the country did you herd sheep?

A. I only passed up and went to herd two months on the other side of the Rio Puerco.

Q. How close did you go?

A. Towards the Toreones.

Q. How much of the country between Jemez and the Rio Puerco did you see at that time?

A. Only portions. We passed with the sheep in the month of November.

Q. How many sheep did you herd?

142 A. I don't remember. I was very young.

Q. To which pueblo did you go closest?

A. Zia.

Q. How long were you going from the Pueblo of Zia to the point of the Mesa Prieta?

A. Only a day passing them.

Q. Did you or did you not observe any other animals or live stock on that road as you were going along?

A. There were several flocks of sheep seen on the plains west of the Ojito and the Mesa Prieta.

Q. Did you see any other animal besides sheep?

A. Only sheep.

Q. What were those sheep that you saw doing?

A. They were pasturing.

Q. In which direction?

A. In one direction and another.

Q. When was the next time you were at that place after the first time you went there?

A. In '74.

Cross-examination by Mr. HOWARD:

Q. Where did you start from with these sheep?

A. Bernalillo.

Re-examination by Mr. CATRON:

Q. Did you see any live stock of the Indians of Jemez and Zia as you went along?

A. No, sir.

Recross-examination by Mr. HOWARD:

Q. Did you know the mark of the Indians at that time on their animals?

A. No, sir.

143 Re-examination by Mr. CATRON:

Q. How would you know that they were Indians' sheep or cattle if you saw them?

A. I could know if the stock belonged to the Indians; they were animals belonging to Spaniards.

Q. Can you tell if the animals belonged to Indians or Mexicans?

A. Yes; I can.

Q. The sheep that you saw, state whether or not there were any herders.

A. Yes; I saw Mexican herders.

Witness excused.

JESUS TRUJILLO, sworn, testified on behalf of defendants, in Spanish, as follows:

Examination by Mr. CATRON:

Q. What is your name?

A. Jesus Turjillo.

Q. Where do you reside?

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A. At Canon de San Diego.

Q. How old are you?

A. Seventy-eight years old.

Q. How long have you lived at the cañon?

A. Since seventy-eight years.

Q. How far do you live from the Pueblo of Jemez league?

A. A league.

Q. Are you acquainted with the country extending from the Pueblos of Jemez and Zia to the Puerco river?

A. Yes, sir.

Q. And do you know the place called the Ventana?

A. Yes, sir.

144 Q. Do you know the Vado de Piedra?

A. Yes, sir.

Q. Do you know the country lying between those two points?

A. Yes, sir; of course.

Q. How long have you known that country between the Pueblos of Zia and Jemez and the Puerco river and from the Ventana to the Vado de Piedra?

A. From the time I was born.

Q. Have you or have you not been frequently over that country since you were a young man?

A. When I was small, no; but after I was grown.

Q. How old were you when you first went over that land?

A. I was a man; I was about twenty-five years old.

Q. Had you ever seen any portion of it before that time?

A. Not then, because there were many wars then with the Navajos, and we did not go out there.

Q. When you were twenty-five years of age who occupied that land, if anybody?

A. I don't know; the wars were in progress and we could not tell to whom it belonged; no one employed us.

Q. State whether or not you were frequently in the Pueblos of Jemez and Zia when you were young; yet a boy.

A. Yes; I did.

Q. Do you know whether they had any live stock in those two pueblos at that time?

A. They had.

Q. Did you know where they pastured them at that time?

A. I knew.

Q. Where did they pasture them?

145 A. Towards the mesa and surroundings. As there were wars then, they did not go out and pasture that point.

Q. Where is the mesa you speak of?

A. On the east side.

Q. When did you first see any one occupying lands, if you ever saw anybody, between the Puerco river and the pueblos?

A. After the year '40.

Q. How were they occupying it?

A. Pasturing sheep and horses; there were very few of them.

Q. Who were those people pasturing sheep?

A. I did not know, sir. I did not pay any attention to them. I was with my own property.

Q. State whether they were Mexicans or Indians.

A. They were Mexicans.

Q. Since you have known anybody to be occupying that section of the country, state how they have occupied it and to what extent of country they have occupied it.

A. Occupying them how?

Q. In any way that you saw them occupying it, with animals or cultivating it any way.

A. The Mexican people from the Rio Puerco have started farming by the road, but they did not farm.

Q. When did you first see any one at the Ojo del Espiritu Santo?

A. I do not know anything until I was the first that went to possess them.

Q. In what year was that?

A. In '46 or '47.

Q. Before you went there?

A. Understand I was the first.

146 Q. How was the country for eight or ten miles occupied during the time you were at the Ojo del Espiritu Santo?

A. Nothin- and nobody was there.

Q. Was there or was there not any cattle, sheep, or horses herded around there?

A. There were only sheep; there were no cows and horses; there were few.

Q. Where did the Indians of Jemez, Zia, and Santa Ana herd their sheep after you were at the Espiritu Santo?

A. I do not know. I did not pay any attention. Probably they pastured them near their pueblos.

Q. Do you know what has been the custom of the Pueblos of Jemez, Zia, and Santa Ana as to pasturing their animals?

A. Of course.

Q. Where did they pasture their animals generally?

A. To the hills, to the mountains, and to the river.

Q. What is that river called?

A. Jemez.

Q. In what direction from the pueblo did they pasture their animals?

A. I don't know the direction nor where they went. I was not looking out for them.

Q. In which way does the river run?

A. To the south.

Q. Did they pasture them to the north or south of the river near the pueblo?

A. Probably they did; I don't know. I don't know; probably they did.

147 Q. Did you ever know any one to pasture their animals within this tract of land which I have mentioned to you?

A. No; I do not. I was minding my own business and

was taking care of my own property, and my own property was far away.

Q. Where did you take care of your property?

A. To the Juan Jose — land—the Ojo del San Jose.

Q. How long did you live at the Ojo del Espiritu Santo?

A. Four years.

Q. During the time you were living there do you know whether the Pueblo Indians pastured their animals near the spring?

A. I do not.

Q. Did you see any of their animals around there?

A. No, sir.

Q. If there had been any around there, you would have seen them?

A. Of course.

Cross-examination by Mr. HOWARD:

Q. Under whose authority did you go to the Ojo del Espiritu Santo?

A. My own.

Q. Why did you leave the springs?

A. Because notice was served on me that the lands belonged and that the spring belonged to Tomas Baca.

Witness excused.

POLITO MONTOYA, sworn, testified on behalf of the defendants, in Spanish, as follows:

Examination by Mr. CATRON:

Q. How old are you?

A. Forty-six years old.

Q. Where do you reside?

148 A. Albuquerque.

Q. Do you know the tract of land lying between the Pueblos of Jemez and Zia and the River Puerco?

A. Yes, sir.

Q. Have you lived in Albuquerque all your life?

A. No, sir.

Q. Where have you lived in any other part of your life?

A. I have lived here and at the springs and from the springs I went to Albuquerque.

Q. What was the name of the springs?

A. Jemez Hot Springs.

Q. How close to them is the land lying between the Jemez Pueblo and the Puerco river?

A. Twenty-five miles.

Q. How often have you been on the land, if you were ever there—the land lying between the Rio Puerco and the Pueblo of Jemez?

A. I first lived upon it.

Q. Where?

A. First at the Ventana and what is called Canoncito.

Q. How long did you live there?

A. Four years.

Q. During what four years?

A. From '76 to '80.

Q. Part of that time had you ever been on the property in question?

A. No, sir.

Q. What years did you live at Jemez Hot Springs?

A. In the year '80 to the year '90.

149 Q. What opportunity did you have for seeing the property while you lived at the Ventana, extending from the Ventana down to the Vado de Piedra?

A. Not to the Vado de Piedra, but to the Ojo del Espiritu Santo.

Q. What opportunity did you have of seeing that?

A. In traveling over it I saw it.

Q. Frequently or only occasionally?

A. Occasionally when I passed on my own business.

Q. During the time you lived there do you know what land was occupied between the Ojo del Espiritu Santo and the Ventana?

A. Yes.

Q. How was it occupied?

A. There were some settlements at the Ventana consisting of about twenty-five or twenty families.

Q. Between the Ventana and the Ojo del Espiritu Santo did you observe whether there was anything there?

A. Nothing.

Q. What use was made of it?

A. Don Diego was with his family at the Espiritu Santo.

Q. State if any other portion of land besides the Ojo del Espiritu Santo was used for any purpose while you were there.

A. Yes; it was occupied with stock—cows, sheep, and horses.

Q. Whose live stock was that?

A. Several persons.

Q. Belonging to Indians or Mexicans?

A. To Mexicans.

Q. Do you or not know during the time you were at the Ventana where the Indians of Jemez, Zia, and Santa Ana pastured and kept their stock?

A. No, sir.

150 Q. Did you ever see others at any time?

A. No.

Q. If they had been occupying the land between the Ojo del Espiritu Santo when you lived there, would you or not have seen them?

A. Yes, sir.

Q. Have you ever been to Jemez?

A. Yes, sir.

Q. When were you there the first time?

A. When I was at school.

Q. At Jemez?

A. Yes, sir; Father Valencia; at Jemez.

Q. During that time where did the Pueblos of Jemez keep their stock?

A. I was very young. I do not know where they kept them at that time.

Q. What kind of animals did they have?

A. I saw cows there, burros, and horses.

Q. Were there a large number or a small number?

A. A few.

Q. What was their custom as to having the stock driven in at night or leaving them out all the time?

A. They brought them in in the night. It was winter when I was at school.

Q. They brought the cows, burros, and horses all up?

A. Yes, sir.

Q. How long did you remain there?

A. Five months.

Q. Was that what they did with them all the time you were there?

A. Yes; I noticed that they brought them to their corrals.

151 Q. How did they manage them during the daytime when they took them out?

A. They would take them to the pasture.

Q. Did they let them go out themselves, or send some one with them?

A. Some were left out themselves and some were sent out with herders.

Cross-examination by Mr. HOWARD:

Q. Did you go along with these herders and shepherds?

A. Never.

Q. Did you ever follow them out?

A. No, sir.

Q. Did you ever see them after they left the pueblos?

A. Yes.

Q. With their herds?

A. Those Indians that returned.

Q. Isn't it true that always that when you left the Canon de San Diego for the Ventana that you followed the road?

A. Yes, sir; the wagon road.

Q. How far can you see through a hill?

A. If it is high I can't see; — it is small I can see.

Q. Can you see from this road you speak of; can you see to the Vado de Piedra?

A. I have said that I don't know the Vado de Piedra.

Q. Can you see from this road to the Pueblo of Santa Ana?

A. No, sir, because the Rio Salada mountain is between.

Q. Can you see from this road north into the mountains of the Jemez?

A. Yes; from the road I can see the pueblo and the mountains.

Q. Can you see the valley of the Jemez?

A. No, sir.

152 Re-examination by Mr. CATRON:

Q. How far is it from the Pueblo of Jemez to the first water to the west?

A. About six miles.

Q. Where is that water?

A. Rio Salado.

Q. What kind of water?

A. Soda water (agua salado). The water of the Arroyo Salado is salted, but that above is not.

Q. What do you mean by the one above?

A. The water that runs in that arroyo above; below there is a little small hill, and the soda spring is at that top of that.

Witness excused.

WILL. M. TIPTON, heretofore sworn, testified on behalf of the defendants as follows:

Examination by Mr. REYNOLDS:

Q. Mr. Tipton, you have been employed considerably in the surveyor general's office formerly, have you not?

A. Yes, sir; I have.

Q. And you are familiar with the archives of the surveyor general's office, old archives, also?

A. I am.

Q. Look at paper marked "Pueblo Claim T T," in red ink "A," endorsed filed in surveyor general's office May 22, 1874, Miller, C. C., and state, if you can, whether that paper is any portion of the original archives pertaining to the surveyor general's office and received by the first surveyor general from the governor of New Mexico, and state as to how you have your knowledge.

153 Mr. EARLE: I object to the testimony as irrelevant, incompetent, and immaterial.

By the COURT: Admitted subject to objection.

A. This paper bears no mark to indicate that it was one of the papers delivered by the governor of New Mexico to the surveyor general in the year 1854 or '55, at the time the first archives were turned over to the office. My reasons for making this statement are that the paper bears upon it no number indicating that it was indexed, as was done with all the papers which were turned over at that time to the surveyor general. Furthermore it bears the endorsement in the handwriting of Mr. David J. Miller, for many years chief clerk and translator of that office, showing that it was filed there on the 22nd day of May, 1874.

Mr. REYNOLDS: I offer plat number 25, showing the location of the San Ysidro grant.

I offer in evidence census of 1890, showing the population of these pueblos, and p. —.

Witness excused and defendants rest.

Mr. EARLE: Now, if the court please, I move to strike out all the testimony injected into this record showing the occupation of this property but the Espiritu Santo and other places since February, 1848, because the same is incompetent and immaterial.

Which motion was submitted with the case.

I hereby certify that the above and foregoing pages contain a full, true, and correct record of the proceedings had in this cause in open court, the same being case number 50, Pueblos of Zia, Santa Ana, and Jemez vs. The United States *et al.*, up to date; that the testimony of the witnesses reported as speaking in the Spanish language is true and correct as given to me by the official translator of this court.

Santa Fé, N. M., Sept. 6, 1893.

L. F. PARKER, JR.,
Official Stenographer.

154 UNITED STATES OF AMERICA, }
Territory of New Mexico, }⁸⁸:

I, James H. Reeder, clerk of the court of private land claims, do hereby certify that the foregoing pages contain a full, true, and complete transcript of the records and files in my office in the case filed therein in which "The Pueblos of Zia, Jemez, and Santa Ana" are plaintiffs and The United States is defendant, for the confirmation of a certain claim commonly known as the "valley of the Espiritu Santo," No. 50.

Witness my hand and the seal of this honorable court this 9th day of September, A. D. 1893.

[Seal Court of Private Land Claims, Santa Fé, New Mexico.]

JAMES H. REEDER, *Clerk*,
By IRENEO L. CHAVES, *Deputy*.

Endorsed on cover: Case No. 15,414. Court of private land claims. Term No., 41. The Pueblos of Zia, Santa Ana, and Jemez, appellants, vs. The United States *et al.* Filed October 7th, 1893.

No. 5.

Stepⁿ as to addⁿ to record.

Filed Oct. 12, 1897.

IN THE
Supreme Court of the United States.

OCTOBER TERM, 1897.

THE PUEBLOS OF ZIA, SANTA ANA AND JEMEZ, <i>Appellants</i> , vs. THE UNITED STATES <i>et al.</i>	}	No. 5.
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STIPULATION.

It is hereby stipulated and agreed by and between the parties hereto, through their respective attorneys, that the printed text of the following named documents (to be found as hereinafter mentioned), offered in evidence by the United States on the trial of said cause in the Court of Private Land Claims, and copies of which were omitted from the transcript of the record on file in the office of the Clerk of this Court, may be taken and considered as part of the record in the above entitled cause the same as if said evidence had been properly incorporated into the original record, certified copies of all of which documents are now on file in the office of said Clerk :

(1) Translation of the title papers in the Luis Maria Cabeza de Baca grant, offered in evidence by the United States (R. 72), and now to be found on pages 11, 12, 13 and 14 of the brief of counsel for the United States.

(2) Translation of the title papers of the Town of San Isidro grant, offered in evidence by the United States (R. 72), and now to be found on pages 14, 15, 16, 17, 18 and 19 of the brief of counsel for the United States.

(3) Translation of the title papers in the Town of Canon de San Diego grant, offered in evidence by the United States (R. 72), and now to be found on pages 19, 20, 21, 22, 23 and 24 of the brief of counsel for the United States.

HENRY M. EARLE,

For Appellants.

MATT. G. REYNOLDS,

*Special Assistant to the Attorney General,
for the United States.*



No. 5.

OCT 12 1897
JAMES H. MCKENNEY
CL

Brief of Earle for Appts.

Filed Oct. 12, 1897.

Supreme Court of the United States

OCTOBER TERM, 1896.

No. 47. 5.

THE PUEBLOS OF ZIA, SANTA AÑA, AND JEMEZ,
Appellants,

vs.

THE UNITED STATES ET AL.

Argument for Appellants.

HENRY M. EARLE,
Attorney.

Supreme Court of the United States

OCTOBER TERM, 1896.

No. 41

THE PUEBLOS OF ZIA, SANTA AÑA, AND JEMEZ,
Appellants,

vs.

THE UNITED STATES ET AL.

This claim for confirmation rests upon a grant made August 6, 1766, by Thomas Velez Cachupin, governor and captain-general of New Mexico, to the three pueblos of Zia, Santa Aña and Jemez. The *testimonio*, produced by the grantees, consists of a petition, order, report, granting decree, certificate of juridical possession and certificate by the governor that the same is a true copy of the original documents in the archives of the government. These papers are in words and figures following:

His Excellency the Governor and Captain-General:

I, Felipe Tafoya, lawyer of this town of Santa Fé, appear before your excellency in full legal form, for and in the name of Cristoval, Indian governor of the Pueblo of Zia, and Thomas, chief war captain of said pueblo, who come under appointment from their casique, and of the other inhabitants of their republic, and, sir, in the name of the aforementioned, and of the community of the Pueblos of Santa Aña and of Jemez, do state that they, from their foundation, have considered as their pasture ground, in the vicinity of their said pueblos, a valley commonly called the Holy Ghost Spring, and that in some urgent cases, the same as is known, is used as a pasture ground for the horses of this royal garrison, and the said parties being aware that the said valley has had, in its vicinity, some applicants to acquire the same by grant, which will cause them very great injury, as they have considerable cattle, sheep, goats and horses for the

royal service, and not having any other place in which to pasture them, particularly the people of the Pueblo of Zia, the greater part of whose fields are upland, and some of them in the glens of said valley, adjoining their said pueblo. In consideration of all of which, I ask and pray that your excellency, in the name of His Majesty (whom may God preserve), be pleased to declare said valley to be the legitimate pasture grounds and pastures of the pueblos, directing that the boundaries thereof be designated to them, that is, on the east, the pueblos aforesaid, on the west, the summits of the Puerco River, on the north, a place called the Ventana, where some Navajo Apaches reside, and on the south, the lands of the citizen settlers of said Puerco River, and, should your excellency order to be done as I have requested, the said parties, my clients, will receive grace with the justice which I ask, and declare in their name that this is not in dissimulation, and so forth.

FELIPE TAFOYA.

DECREE.

TOWN OF SANTA FÉ, *June 16, 1766.*

Having seen the petition of the Republics of the three Pueblos of Zia, Santa Aña and Jemez, of the Queres nation, all contiguous to the banks of the Santa Aña River, I do, in order to decide in justice, commission the chief alcalde of said pueblos, Bartolomé Fernandez, to the end that, having examined the boundaries which they mentioned as of the Holy Ghost Spring, where they state they pasture their stock and horses, he reports to me the leagues the same may embrace from north to south and from east to west, and whether the aforesaid three pueblos have the cattle, sheep, goats and horses proportional to the boundaries asked for for their grazing, and also whether or not any citizen or citizens are damaged by said boundaries under any prior valid grant and possession held by them, which the said chief alcalde will perform with all possible veracity.

And I, Thomas Velez Cachupin, governor-general of this kingdom, have so provided, ordered and signed, with my two attending witnesses, in the absence of notaries, there being none in this government.

VELEZ CACHUPIN.

Witness : CARLOS FERNANDEZ.

Witness : JOSÉ MALDONADO.

REPORT.

In compliance with the order of his excellency Thomas Velez Cachupin, governor and captain-general of this kingdom, in his foregoing decree of the sixteenth of June instant, I Bartolomé Fernandez, chief alcalde and war captain of the pueblos of the Queres, nation, proceeded to examine the lands asked for by the three Pueblos of Jemez, Zia and Santa Aña, and the boundaries which they mention in their petition, and I find that they contain, from north to south, that is, from the stone ford, which is the boundary of the citizen settlers of the Puerco River, to the Vintana, about eight leagues, somewhat more or less, and from east to west, that is, from the Pueblo of Zia, which is nearest to the lands asked for, to the Puerco River, about six leagues, somewhat more or less, in which distance I know of no lands suitable for cultivation, the watering places being scanty and few, and they are only suitable for pasturing live stock, which is abundant at said pueblos, though the said three republics have no other lands on which to sustain their stock, and it being, as it is true, that none of the aforementioned boundaries will injure any one holding or to hold possession of lands within the same, which proceedings I placed on record, signing the same with two attending witnesses, in the absence of notaries, there being none of any kind in this kingdom, town of Santa Fé, June, one thousand seven hundred and sixty-six.

BARTOLOMÉ FERNANDEZ.

Witness : JUAN MARIA ANTONIO RIVERA.

Witness : PEDRO PADILLA.

GRANTING DECREE.

In the town of Santa Fé, on the sixth day of the month of August, one thousand seven hundred and sixty-six, I, Thomas Velez Cachupin, governor-general of this kingdom of New Mexico, in view of what is petitioned for by the three Pueblos of Santa Aña, Zia and Jemez, of the Queres nation, and of the report which their chief alcalde, Bartolomé Fernandez, makes,

that they have held said lands for their live stock, which at present is abundant, without having any other places in which to pasture them, except those referred to in their petition, together with the small watering places mentioned in said report, declared that I would grant, and I did grant, in the name of His Majesty (God preserve him), the aforesaid lands for pasturing the stock and horses of the aforesaid three Pueblos of Santa Aña, Zia and Jemez, with the boundaries, from north to south, from the place Ventana to the stone ford of the Puerco River, the boundaries also of the citizens of the place San Fernando of Nuestra Señora de la Luz; and from east to west, from the Pueblo of Zia to the said Puerco River, the eastern edge, the whole of the valley of the Holy Ghost Spring being embraced within the center and within the boundaries of this grant, with the condition and stipulation: that in case of necessity the horses of this royal garrison of Santa Fé may, and shall be, kept in said valley, the same being a place where they have been accustomed to graze; wherefore the aforementioned three pueblos are to place no obstacle in the way, nor claim damage therefor; and the aforementioned boundaries being for the future considered those of the aforementioned three pueblos, they will hold the same with legitimate title under this royal grant, so that they be not molested by any Spanish citizen or citizens, taking their stock thereupon, deeming the pasturage to be common. And I direct the chief alcalde, Bartolomé Fernandez, to go and give to the aforementioned three pueblos royal possession of this grant, and the boundaries therein set forth, taking with him the justices and seniors of each one of them, and placing his proceedings on record, following this my granting decree, which he will return to me, in order to furnish to each pueblo the proper testimonio of the whole, and deposit the original in the archives of this government, where it shall remain.

And I so provided, granted, ordered and signed, acting with two attending witnesses in the absence of notaries, there being none of any kind in this jurisdiction.

THOMAS VELEZ CACHUPIN.

Witness: CARLOS FERNANDEZ.

Witness: DOMINGO SABADIA.

POSSESSION.

In compliance with the directions of his excellency Thomas Velez Cachupin, governor and captain-general of this kingdom of New Mexico, I, Bartolomé Fernandez, chief alcalde and war captain of the pueblos of the Queres nation, proceeded to the aforementioned pueblos, and, in company with the governors, casiques and other authorities of the Pueblos of Santa Aña, Zia and Jemez, proceeded to the lands asked for by the natives of the said three republics mentioned by his excellency the governor aforesaid, in the name of his majesty, as appears by the foregoing grant, and, summoning the contiguous land-holders, who are the residents of the place San Fernando, of the Puerco River, and the lieutenants, Juan Bautista Montaña, Agustin Gallego and Tomas Gurule, being present, I took by the hand the aforesaid governors, who are Cristoval Naspona, and Cristoval Chiguigui, Pedro Chite; Casiques Sebastian, Lazaro, Juan Antonio; War Captains Agustin, Tomas, Juan Domingo, and the other magistrates, and conducted them over said land, and they shouted long life to the king our sovereign, whom may God preserve, and they cast stones, and pulled up grass, in sign of possession, which I gave them, and which they received quietly and peaceably, without any opposition whatever, under the conditions mentioned in the aforesaid grant, and with the boundaries therein set forth, which are from north to south from the Ventana to the stone ford, and from east to west from the Pueblo of Zia to the eastern edge of the Puerco River. And that it may so appear, I, the aforesaid chief alcalde, signed this, with two attending witnesses, acting as special justice, in the absence of notaries, there being none in this jurisdiction, at this place, the Spring of the Holy Ghost, on the twenty-eighth day of September, in the year one thousand seven hundred and sixty-six. I certify.

BARTOLOMÉ FERNANDEZ.

Witness: MIGUEL TENORIO DE ALBA.

Witness: PEDRO GARCIA.

It agrees with the original on file in the archives of this government, from whence, I, Thomas Velez Cachupin, governor general of this kingdom of New Mexico,

ordered the same to be copied. It is true and corrected, and there were present my attending witnesses, with whom I act in the absence of notaries, there being none in this jurisdiction. In testimony of truth.

THOMAS VELEZ CACHUPIN.

Witness: CARLOS FERNANDEZ.

Witness: DOMINGO LABADIA.

The foregoing translation, made by me, is a correct rendering from the original in Spanish, to the best of my knowledge and belief.

SAM'L ELLISON.

Sworn to and subscribed before me this July 25, 1873.

JAMES K. PROUDFIT,
Surveyor General.

SURVEYOR GENERAL'S OFFICE,
TRANSLATOR'S DEPARTMENT, SANTA FÉ,
NEW MEXICO, July 25, 1873.

The foregoing translation having been by me compared with its original in Spanish, and found correct, is hereby adopted as the official translation.

DAV. J. MILLER, *Translator.*

It appears from the record that the grant was presented to the surveyor-general of New Mexico under the provisions of the act of July 22, 1854, and, on February 2, 1873, by him approved and recommended to Congress for confirmation, which body has since taken no action upon it. November 28, 1892, the claim was filed in the Court of Private Land Claims under the provisions of the act of March 3, 1891.

The evidence shows (Record, p. 18, f. 31; 20, f. 32; 45, f. 74; 49, f. 80; 50, f. 82; 51, f. 83; 57, f. 91; 60, f. 96; 65, f. 103), that the grantees have possessed the tract to the present day.

On August 10, 1893, the petition was dismissed, the Land Court holding that the grant was a license to pasture, and not a grant in fee (R., 22, f. 35).

A LICENSE TO PASTURE.

In the first place, it will be noted that this alleged license is in the usual form of a Spanish *grant in fee*—that is, it consists of a petition for the land, direction by the governor to the alcalde to make a report, the alcalde's report, granting decree and certificate of juridical possession. This same method of acquiring *title in fee* was followed by the republic of Mexico (see regulation of 1828), and in substance by the king himself in his royal grants (2 White, 189, 193, 196). The various steps are so familiar to the court that it is unnecessary to discuss the matter further.

The petition for the grant alleges that the Indians have considered it their pasture ground "from the time of their foundation (1689); that the reason they ask for a royal grant of it is because some settlers in that vicinity want to acquire the same by grant. The governor directs the alcalde to inquire into the facts, and to ascertain whether the "number of cattle, sheep, goats and horses of said pueblos is proportional to the boundaries asked for;" the alcalde finds that the pueblos have sufficient stock, and that their possession will injure no one. Thereupon the governor makes a grant of the *land* itself, and declares that the *boundaries* of the tract shall in the future be "considered those of the aforementioned three pueblos; they will hold the same with *legitimate title* under this *royal grant*." he directs the alcalde to give the pueblos "*royal possession of this grant*;" the alcalde proceeds, with the governors and casiques of the pueblos, to the *lands* asked for, summons the contiguous land owners, and places them in possession without injury to any third party.

This is precisely the course that would have been adopted if this alleged license had been a grant in fee.

On the face of the papers, then, there is nothing to indicate that this is a mere "license to pasture," unless it be the condition that the pueblos shall allow the horses of the garrison

at Santa Fé to graze thereon in case of necessity. This, however, did not convert the grant into a license any more than the royal cedula of December 12, 1748, converted every grant into a license because there was reserved the right to take therefrom a certain quantity of wood for the royal navy. The substance of this cedula was incorporated into article 9 of the regulations of Morales in these words (2 White, 211):

“Although the king renounces the possession of lands sold, distributed or conceded in his name, those to whom they are granted or sold ought to be apprised that his majesty reserves the right to take from the forests known here under the name of cypress woods all the wood which may be necessary for his use, and more especially which he may want for the navy.”

This right seems to have been taken from the king by the decree of the Cortes of January 14, 1812, but was restored by the cedula of September 18, 1814, wherein he says:

“With regard to timber growing on private lands no alteration be made for the present, saving always whatever his majesty may hereafter think fit to determine after fully examining that point.”

See 2 White, 142, 143, 247.

It could hardly be contended that a fee simple would be defeated by article 5 of the colonization law of August 18, 1824, on the ground that a certain right was reserved to the Mexican government in the lands granted by virtue thereof.

If, then, there is nothing on the face of the documents to indicate that they are not what they purport to be, namely, *a grant of land*, it must be that there is something inherent in the word “pasture” which compels the conclusion that this is a mere license.

Under the Spanish law, grants of land were made for two purposes, to wit, cultivation and grazing. This classification was followed by Mexico in its colonization law—that is to say,

a single person could acquire by grant one square league of arable land suitable for irrigation, four square leagues of arable land without the facilities of irrigation, and six square leagues of grazing land (1 White, 602). It has never been suggested that a grant of the latter was a mere license under this law.

In the case of *United States vs. Davenport* (15 How., 1, 7) the Supreme Court says:

“Under the laws and regulations of the Spanish crown it is a question of some doubt whether grants for the purpose of grazing cattle were any more than mere licenses to use the lands, and whether they were designed to operate upon the dominion. This question was presented in the case of *United States vs. Huertas*, 8 Pet., 475, upon a grant ‘with the precise condition to use the lands for the purpose of raising cattle, without having the faculty of alienating said land by sale, transfer, control of retrocession or by any other title in favor of a stranger without the knowledge of this government,’ was confirmed by decree of this court against that objection on the part of the government. We consider the question closed by the decision in that case in reference to the country formerly held by Spain lying east of the Sabine.”

The grants in controversy in the above-mentioned case were for very large tracts of pasture land lying within what was known as the “neutral territory,” and hence the reference by the court to the Sabine River. The *Huertas* cases (8 Pet., 475, 488) demonstrate the fact that, under the practice obtaining in Florida (which was different from that in New Mexico), at the end of four years from date of the first concession or warrant (which was generally issued by an under secretary) the governor gave the grantee a complete title if he had used the tract for pasturing his cattle during the time specified.

What gave rise to the doubt on this point was an alleged authority often quoted as “a communication from the governor of Florida to the king of Spain,” and on the strength of

which grants have been disapproved by the surveyor-general under the act of July 22, 1854. This communication can be found in 2 White, p. 254, and is as follows :

"The concession of a great extent of land for the rearing and pasturing of cattle constitutes no more than the usufruct of it for the time agreed upon ; but the grantee has not, nor never had, the most remote right to solicit the proprietorship, for there is no law or regulation on which to found it, and consequently the land does not go out of the class of public lands, since it is the same as if it were held on rent."

A careful review of the whole matter will clearly show that this was simply the assertion of an attorney who was arguing the case of his client (the duke of Alagon) with the governor of Florida. The controversy was confined to pasture grants which had been abandoned, and even in these cases the governor says the grantees should be allowed to plead, to show whether they had been driven off by the Indians, etc., for on these "circumstances" it depends "whether they should or should not be adjudged to be out of the class of public lands" (2 White, 257). The governor took a view diametrically opposite to that of the attorney, as evidenced by the correspondence (*ib.*, 242-258).

That the Spanish government made grants of large tracts of land for pasturage in Texas can be seen by reference to the case of *Cavazos vs. Trevino* (6 Wall., 773), the grant being made in 1781 for 59 square leagues to a single individual.

The laws of Spain made no distinction as to acquiring title between lands for cultivation and lands for pasturage (2 White 35, *law* 9; *ib.* 36, *law* 7; *ib.* 37, *law* 14). *Liber* 4, *title* 2, *law* 1 (2 White, 38), expressly states what constitutes a *peonia* of land, to wit: A lot 50 feet front and 100 deep, 100 fanegas of arable land fit for the cultivation of wheat, 10 for corn, 2 huebras (as much land as a yoke of oxen can plow in two days) of garden land, and 8 for planting trees, with pasture sufficient for 10 breeding sows, 20 cows, 5 mares, 100 ewes,

and 20 goats. A *caballeria* was a tract five times as large. The same law provides that, that the settler may acquire a fee-simple after an occupancy of four years. Can it be said that he acquired title to the one class, but not to the other because it was for grazing purposes?

Liber 4, title 12, law 13, recognizes the general right of common of pasture in ungranted lands, and also the fact that a fee-simple may be acquired under a pasture grant, in the following language (2 White, 41):

"We command the viceroys to inquire concerning lands susceptible of irrigation, and to order the cattle to be withdrawn from the same, and they shall cause wheat to be sown on said lands, if the proprietors have not a *legal title to raise cattle thereon*."

Liber 4, title 12, law 14, provides for the distribution among the Indians—

"Whatever they may justly want to cultivate, sow, and *raise cattle, confirming to them what they may now hold*, and *granting what they may want beside*."

2 White, 41.

Liber 4, title 12, law 5 (2 White, 39), providing for the distribution of lands and pastures among new settlers, declares that—

"The Indians shall be left in possession of their lands, hereditaments and *pastures*, in such manner that they shall not stand in need of the necessities of life, and shall be allowed all the aid and facilities for the sustenance of their household and families."

Article 2 of the regulation of 1754 (*ib.* 50) expressly provides that—

"In regard to lands of community and those granted the townships (*pueblos*) for *pasturage* and commons no

change shall be made; the towns shall be maintained in possession of them, * * * and their extent enlarged according to the wants of the population,"

and a strict observance is enjoined by the same article of the requirements of *laws 14, 15, 17, 18 and 19, title 12, liber 4*, all of which, except *law 15*, relate to the lands of Indians.

The defendants in this case set up an alleged grant made to Luis Maria Cabeza de Baca in 1815, but it will be noted that he abandoned the tract within two years (R. 28, f. 47), being, as his witnesses allege, driven off by the Navajos. Contrary to their usual custom, however, they gave him ample time to pack up his goods and quietly move (R. 28, f. 47), and the "Indians" did not allow him or his descendants to return until 1869. The Indians mentioned were undoubtedly the owners of the tract, namely, the inhabitants of Zia, Santa Aña and Jemez, and, as matter of fact, the same Baca was in 1819 petitioning for the land afterwards confirmed to the town of Las Vegas, in lieu of which five floats, covering 495,000 acres, were confirmed to his seventeen children and their descendants (act of June 21, 1860; 12 Stat., 72), whose names are set forth with such a flourish in the record.

In order to have any standing whatever before this court, the claimants under this alleged grant of 1815 must show a compliance with the law of Spain obtaining in such cases, which they have utterly failed to do. The royal cedula of 1571 provides as follows:

"We desire that the Indians may be in every respect relieved and well treated, and receive no molestation, damage or injury in their persons or property. And we command that, on all cases and occasions where it may be necessary to send or get information whether any injury would result to individuals by granting lands

to cultivate or distribute, or for other purposes, the viceroys, presidents and auditors will cause to be cited those really interested, and on the part of the Indians the fiscals of the royal audience, in order that all and each of the aforesaid may take his proceedings and allege his right against any injury that may result to his prejudice."

2 White, 79.

Liber 4, title 12, law 16. "In order to avoid the inconveniences and damages resulting from the sale or gift to Spaniards of caballerias or peonias, and other tracts of land, to the prejudice of the Indians, upon the suspicious testimony of witnesses, we order and command that all sales or gifts shall be made before the attorneys of our royal audiences, to be summoned for that purpose, who shall be bound to examine with due care and diligence the character and depositions of witnesses; and the presidents and audiences, where they shall administer the government, shall give or grant such lands by the advice of the board of treasury, where it shall appear that they belong to us, at auction, to the highest bidder, as other estates of ours, and always with an eye to the benefit of the Indians." *Ib.* 42.

Liber 4, title 12, law 17. "We command that the sale, grant and composition of lands be executed with such attention that the Indians shall be left in possession of the full amount of lands belonging to them, either singly or in communities, together with their rivers and waters." *Ib.* 43.

Liber 4, title 12, law 9. "We command that the farms and lands which may be granted to Spaniards, be so granted without prejudice to the Indians; and that such as have been granted to their prejudice and injury be restored to whoever they of right shall belong."

Since the discovery of the country by the Spaniards these Indians have been self-supporting, and have not caused the United States an outlay of one cent. On the contrary, they have often served as a barrier between its citizens and the in-

roads of the Apaches, Utes and Navajos. Spain threw its mantle of protection around them (Hall's Spanish and Mexican Law, sec. 154, *et seq.*).

We respectfully submit that this grant is perfect, and should be confirmed.

Attorney for Appellants.

ASSIGNMENT OF ERRORS.

1st. Error in not holding that this grant is one that Mexico was bound to confirm and one that the United States should have confirmed under Section 13 of an Act of Congress approved March 3, 1891.

2nd. Error in not holding that Grantees had perfect title by prescription.

3rd. Error in holding that title was merely a license to pasture.

4th. Error in finding contrary to evidence.

5th. Error in not holding that title was perfect at date of change of flag.

6th. Error in not holding that grant was a perfect one under the laws of Spain in 1766.

7th. The Court erred in not confirming this grant in the name of Petitioners.

N^o. 5.

By. of Atty. Gen^l. (Reynolds & Richard)
for Appellees.
Filed Oct. 11, 1897.

OCT. 11 1897
JAMES H. MCKENNEY,
CLERK

In the Supreme Court of the United States.

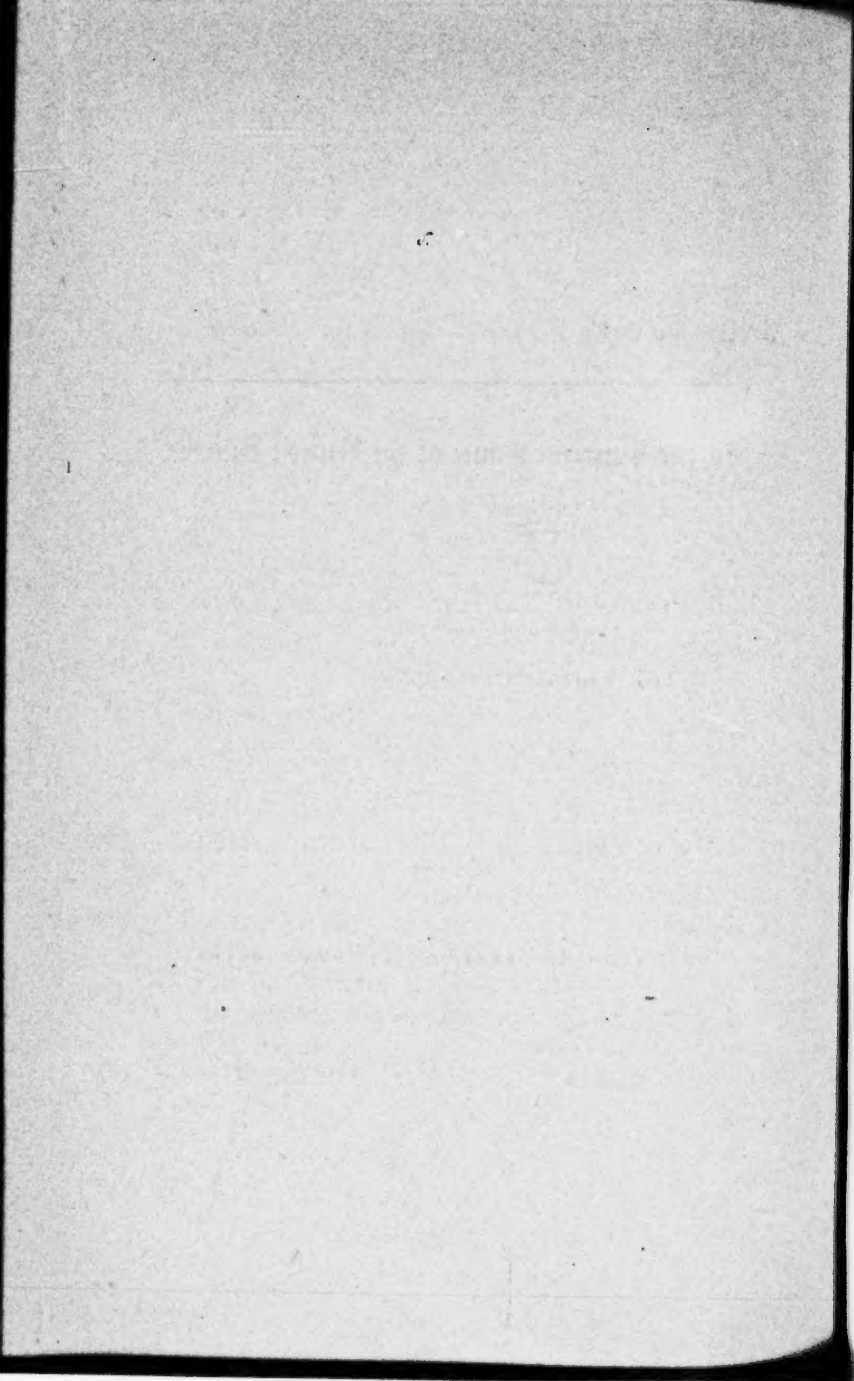
OCTOBER TERM, 1897.

THE PUEBLOS OF ZIA, SANTA ANA, AND Jemez, appellants, v. THE UNITED STATES ET AL.	}	No. 5.
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APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

**STATEMENT, ABSTRACT, AND BRIEF ON BEHALF OF THE GOV-
ERNMENT.**

OJO DEL ESPIRITU SANTO GRANT IN NEW MEXICO.



In the Supreme Court of the United States.

OCTOBER TERM, 1897.

THE PUEBLOS OF ZIA, SANTA ANA, AND Jemez, appellants, <i>v.</i> THE UNITED STATES ET AL.	} No. 5.
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STATEMENT, ABSTRACT, AND BRIEF ON BEHALF OF THE GOVERNMENT.

This suit was instituted jointly by the Indian *pueblos* of ZIA, SANTA ANA, and JEMEZ, for the confirmation of what is known as the OJO DEL ESPIRITU SANTO GRANT, better known as the Indian pasture grant, the same containing about 382,849 acres. The basis of the claim is that in the year 1766 representatives of these Indian *pueblos* petitioned the governor, Tomas Velez Cachupin, stating that from their foundation they have considered as their pasture ground a valley commonly called the Holy Ghost Spring (*Ojo del Espiritu Santo*), and in urgent cases the same was used for pasturage of the horses of the royal garrison, and the petitioners, being aware that the said valley had in its

vicinity some applicants to acquire the same by grant, it would cause them very great injury, as they have considerable cattle, sheep, goats, and horses for the royal service, and they did not have any other place to pasture them, particularly the people of the *pueblo* of Zia, the greater part of whose fields are upland and some of them adjoining the lands of their *pueblo*. Wherefore, they pray the governor to be pleased to declare said valley to be the *legitimate* pasture grounds and pasture of their *pueblos*, directing that the boundaries thereof be designated to them—that is, on the east the *pueblos*, on the west the summits of the Puerco river, on the north the place called Ventana, where some Navajo Apaches reside, and on the south the lands of the settlers of the Puerco river, etc. (R., 14-15.)

On the 16th of June, 1766, governor Cachupin directed Bartolomé Fernandez, chief *alcalde* of the *pueblos*, to examine the boundaries which they mentioned as of the Holy Ghost Spring, where they state they are pasturing their stock and horses, directing him to report the number of leagues the same may embrace from north to south and from east to west, and whether the three *pueblos* have the cattle, sheep, and horses proportional to the boundaries asked for; also whether any other citizen or citizens would be damaged by the boundaries under any prior grant or possession. (R., 15.)

Under this order, the *alcalde* made his report that he proceeded to examine the lands asked for by the *pueblos* of Zia, Santa Ana, and Jemez, and found that they contained from north to south, that is, from the stone ford,

which is the boundary of the citizen settlers of the Rio Puerco, to the Ventana, about eight leagues, somewhat more or less, and from east to west, that is, from the *pueblo* of Zia, which is nearest the lands asked for, to the Puerco River, about six leagues, somewhat more or less, in which distance he knows of no lands suitable for cultivation, the watering places being scanty and few, and they are only suitable for pasturing live stock, which is abundant at the said *pueblos*, and the said *pueblos* have no lands on which to sustain their stock, and it being true that the said boundaries will injure no one holding or to hold land within the same. (R., 15-16.)

Upon this report the governor, on the sixth day of August, 1766, at the town of Santa Fé, made his decree, stating that, in view of the petition of the *pueblos* and the report made by Bartolomé Fernandez, they have held the lands for their live stock, which at present is abundant, without having any other places at which to pasture them except those referred to in the petition, together with the small watering places mentioned in said report, he declared that he would and did grant, in the name of his Majesty, the aforesaid lands for pasturing the stock and horses for the three *pueblos* of Santa Ana, Zia, and Jemez, with the boundaries from north to south from the place Ventana to the stone ford of the Puerco river, the same being the boundaries of the citizens of the place of San Fernando of Nuestra Señora de la Luz, and from east to west from the *pueblo* of Zia to the Puerco river, the eastern edge, the whole of the valley of the Holy Ghost Spring being embraced in the

center of the boundaries of this grant, with the condition and stipulation that in case of necessity the horses of the royal garrison shall be kept in the valley. The aforementioned boundaries to be for the future considered as the boundaries of the aforementioned *pueblos*, and they are to hold the same with legitimate title under this grant, and are not to be molested by any Spanish citizen or citizens taking their stock thereon, deeming the pasturage to be common. And he directs the *alcalde*, with the usual formalities, to place the parties in possession, and return the *expediente* in order that the proper *testimonio* may be furnished the grantees and the original deposited in the archives. (R., 16-17.)

Based upon this decree, Bartolomé Fernandez, on the 28th day of September, 1766, proceeded to place the three *pueblos* in possession of the land; the act of possession is in the usual form and the boundaries therein defined are the same as those ordered in the decree. (R., 17.)

Then follows the certificate of Velez Cachupin and the *testimonio*. (R., 17-18.)

The claim was presented to the surveyor-general under the law of July 22, 1854, and through the Secretary of the Interior reported to congress for confirmation, but no action was ever taken. The report is set forth in executive document No. 206, House of Representatives, Forty-third congress, first session.

It is claimed that the *pueblos* have since the date of the act of possession been continuously, openly, and notoriously in possession of the property, pasturing their

herds upon the same and cultivating certain portions thereof, under a claim of exclusive right thereto by virtue of the grant. That they are now in the open and notorious use and occupation of the same as the owners in fee, except that portion of it which may be in conflict with that certain grant known and called the Santissima Trinidad Galvana Ignacio Sanchez Vergara tract, in regard to which they admit they have released the same unto the claimants thereof. (R., 3.)

It is alleged in the petition that the heirs of Luis Cabeza de Baca claim a portion of the grant, and that they are informed that congress has confirmed a grant to the heirs of the said Baca for a tract of land called the Ojo del Espiritu Santo grant which was made May 23, 1815, to said Baca, and it laps upon and conflicts with the grant sued for, but no patent has ever been made or issued to the heirs of said Baca for the said tract of land so confirmed to them by congress, and it is alleged that Jacob Perea has obtruded upon that portion of the grant confirmed by congress to the said Baca, and that the defendants, Pedro Perea, Mariano S. Otero, and Charles H. Gildersleeve claim to have an interest in the same; that said proceedings before congress were without notice to them, and that the acts and confirmation by congress of said tract were irregular and void. Petitioners allege that prior to and during the year 1815 and continuously thereafter, they were in the actual and notorious possession of said grant, and that they had no notice of any application or proceedings or of any act of juridical possession of said Luis Cabeza de Baca under

the grant of said date, and that the aforesaid possession of the petitioners was well known to the said Baca, as at the date of said alleged grant and juridical possession to him they were in possession of the same as aforesaid; and for these reasons said grant to Baca was void as against the petitioners.

It is further alleged that if the action of the Spanish authorities in making the grant of 1815 and the action of congress confirming the same must be upheld by the court, that each and every acre of the grant sued for, covered by the confirmed grant of 1815 of Ojo del Espiritu Santo, is in excess of \$1.25 in value. (R., 4.)

It is further alleged, upon information and belief, that governor Chacon, on the 6th of March, 1798, made a grant of a tract of land to José Miguel Garcia and his associates, known as the Town of the Cañon de San Diego grant, which grant was confirmed by congress on June 21, 1860, upon the report of the surveyor-general, and it is contended by claimants that the boundaries of said grant as confirmed were largely in excess of those contained in the act of juridical possession and do not properly conflict with this grant, provided the court will restrict the act of confirmation and survey to two thousand one hundred *varas* lying between the south boundary of the Cañon de San Diego grant of 1788 and the north line of the *pueblo*. The petition closes with the usual prayer for relief. (R., 1-6.)

On behalf of the government, after traversing the formal allegations of the petition, its answer says it is untrue that the plaintiffs were placed in possession of the property claimed in 1766, and that they have ever since been

in the actual use and occupation of the same; that whatever right plaintiffs may have had to the land in question was purely a permissive right or license, subject to revocation by the authorities at any time, or subject to forfeiture by abandonment or nonuser, and whatever use and occupation they may have had of any part thereof was for pasture grounds and for no other purpose, and that the same had been abandoned as such long prior to the acquisition of the territory by the United States, and that at said time said license had been forfeited by nonuser, and that the same has not for many years prior to the acquisition of this country by the United States been of any use or benefit to the plaintiffs. And that several years prior to Spain's relinquishing dominion over this province, to wit, in the year 1815, it granted a portion of said land to one Luis Cabeza de Baca, which said grant was recognized by the republic of Mexico, recognized by the government of the United States, and finally confirmed and patented by the United States to the heirs of said Baca. That the rights, if any, which plaintiffs may have had in and by said alleged grant of 1766 were ignored, denounced, and forfeited by said grant of 1815 to said Baca, and that the exercise of dominion and ownership over the same by the United States occurred at various times subsequent to said grant of 1766.

It is also alleged in the answer that the only authority of law the officials of said province had to grant lands to the Indians was in the form of a settlement or *pueblo*; that it was the policy of the Spanish government to consolidate and draw into communities all of its Indian subjects, and the authorities were limited to four leagues in

making said grants. That in obedience to said policy, law, and usage, particularly in this province, the officials granted to the Indians in no case more than four leagues, and in obedience to said custom, law, and usage each of the plaintiffs applied to this government for a confirmation of its *pueblo* and received a patent therefor, at said time making no claim for the land now sued for. With the usual formal allegations the answer closes, praying the rejection of the claim. (R., 6-8.)

Certain parties claiming under the grant of 1815 made to Luis Cabeza de Baca, made parties defendant to this action, filed their separate answer in which they deny that there is any such body or person known as the *pueblos* of Zia, Santa Ana, or Jemez, or that any such body, either jointly or separately, exists or has any right to exist in proceedings for the confirmation of any grant title whatever; denies that any such body was authorized or empowered or entitled to hold or take such real estate either under the laws of the kingdom of Spain, Mexico, or of the United States; denies that said Indians can bring suit by virtue of their designation as Indians of the *pueblo* of Zia, Santa Ana, or Jemez, or all of them combined. The remainder of this answer is a specific traverse of the allegations contained in the original petition. (R., 8-11.)

Testimony was taken before the surveyor-general in 1873 on the presentation of this claim to him under the law of 1854.

JUAN CASADOS testified on behalf of the claimants that he was sixty-seven years of age, was born and has since resided at the Cañon de Jemez, and knows the

tract of land called the Espiritu Santo grant. He understood it had been granted by the King for pastoral purposes to the *pueblos* of Zia, Santa Ana, and Jemez and neighboring white people of San Ysidro and other adjacent settlements. Has never seen the grant documents, and can not read or write. The natives of the *pueblos* have always had live-stock grazing on the tract, except during hostilities with the Navajos. He knows the boundaries of the land, as he has heard them from the old people in the vicinity, which are substantially as in the act of possession. Has never heard that the land or any part thereof was ever claimed or occupied by any other claimants except one Diego Baca, who resided at the spring for the last three years and has been cultivating land there and had some stock there also, but under what right he occupied it he did not know. Witness disclaims any interest in the property except the right to pasture his stock there. (R., 18-19.)

JUAN RUMALDO CASADOS testified on behalf of the claimants before the surveyor-general, that he was sixty-three years of age, born and lives in the Cañon de Jemez, and is a brother of the preceding witness. Knows the tract of land called the Espiritu Santo grant; it is bounded on the north by the high *mesa* of Ventana, on the south by the Vadito de la Piedra (rocky ford) on the Puercio river, on the west by the Puercio river, and on the east by the top of the Jemez mountains; that the reputed owners of the tract were the *pueblos* of Zia, Santa Ana, and Jemez, and the only party now in possession of the property was one Diego Baca, who had been residing there the last three years with his family,

but he does not know upon what right he occupies it. The Indians have always pastured their stock there, except when the Navajos prevented, and are now pasturing there. He does not know of any adverse claimant, and has no interest in the property. (R., 19-20.)

The claimants offered in evidence a petition filed with the surveyor-general, under the law of 1854, by the claimants of the Luis Cabeza de Baca grant, together with the testimony of Francisco Salas and Manuel Hurtado. (R., 24-28.) This offer does not include the title papers upon which the petition is based, and I shall take occasion to refer to the matter later on.

LORENZO LOBATO, on the trial, testified, on behalf of the claimants, that he is the governor of the *pueblo* of Zia, and he produced from his official custody the *testimonio* of the grant. It will be noticed that this witness and several Indian witnesses following have no idea of time or distance. Without attempting to abstract the testimony of these *pueblo* Indian witnesses, it may be admitted that the *testimonio* produced came from the proper custody, in proper form, and contains such a certificate as should be appended to all *testimonios* delivered to grantees as evidence of title. We have never been able to find the original *expediente* in the archives. It appears from the testimony of these witnesses that the three *pueblos* have been in the habit of pasturing their stock mostly within the *pueblo* lands, also on this grant, as well as in various other directions. It also appears that other people have been pasturing their stock on the grant; that from time to time the Indians, particularly those of Zia, when the

rains would furnish sufficient water, were in the habit of going out upon the grant and cultivating small portions of it and in the Cañada de las Milpas. (R., 30-71.)

On behalf of the government the following documentary evidence was offered, the whole of which has been omitted from the original transcript, and consequently omitted from the printed record; the offers will be found on pages 72-73 of the printed record, and are as follows:

1. All the papers in the case of Luis Cabeza de Baca for the confirmation of the Espiritu Santo grant. I have had copies of these papers certified to by the clerk of the court below and filed with the clerk of this court. The translation of the title papers, to which I shall hereafter call special attention, are as follows:

Luis Maria Cabeza de Baca or Ojo del Espiritu Santo grant. Reported No. 44. Offered in evidence by the United States. (R., 72.)

SIR GOVERNOR OF THE PROVINCE:

Dn. Luis Maria Baca, resident of Our Lady of Guadalupe of Peña Blanca, appears before you, with the due attention which law will allow me, and is convenient to me, and state, sir, that having registered a piece of uncultivated land, commonly called the Spring of the Holy Ghost, at this time distant five or six leagues from the *pueblo* of Jamez to the west, and being compelled to withdraw my animals to avoid difficulties with the Quintaras Indians, and said tract contains sufficient capacity for my said animals, and considering that it is not injurious to any person, I humbly ask your Excellency to be pleased to grant me said tract in the name of his Majesty,

whom may God preserve. I ask for said tract for myself, for my children, fifteen in number, as upon said tract I intend to maintain my property and that of my children; a small tract can also be cultivated with some difficulty, as the water is scarce, although notwithstanding what I have stated I inform your Excellency that the Messrs. Ortiz state that said tract was granted to them by Don Fernando de la Concha, who was governor of this province. It is twenty and more years since that gentleman left this province, and during all of that time which I have stated it is not known that said Messrs. Ortiz have settled upon it with their families or their stock, nor leased or loaned it to any person, and if your Excellency is pleased to grant me said tract in the name of his Majesty, whom may God preserve, its boundaries are, on the east the summit of the Jemez mountain; on the west the Puerco river and the point of the Prieto table-land; on the north the table-land commonly called "La Ventana;" on the south the Cañon of La Querencia and the boundary of the farm of Don Antonio Armenta; in view of all which I humbly pray and request your Excellency to be pleased to accord my petition, in justice; by doing as I request I will receive grace, which I impetrate. I swear that it is not done in malice, &c.

Peña Blanca, May 23rd, 1815.

(Signed) LUIS MARIA CABEZA DE BACA,
Perseguido.

SANTA FÉ, *May 24th, 1815.*

If, as represented by the petitioner, Don Antonio Ortiz has forfeited his right to the tract of the Spring of the Holy Ghost in the jurisdiction of the justice of Jemez in abandoning and depopulating it for more than twenty years, which should be forfeited according to the last royal order in reference to these cases, the petitioner may be

allowed to settle upon it, granting him in the name of his Majesty building lots, and inclosures with tracts of land for cultivation, and whatever more may appertain to said tract, for himself and his children, and I commission the justice of Jemez to superintend the arrangements for the settlement and preservation of order.

MAINEZ.

On the fourteenth of June, one thousand eight hundred and fifteen, by virtue of the foregoing decree of lieutenant-colonel Don Alberto Mainez, governor of this province, I proceeded, in company with my attending witnesses and the petitioners, to the land granted to Don Luis Maria Cabeza de Baca and his fifteen children, who are José Antonio Baca, Juan Antonio Baca, José Baca, Domingo Baca, José Miguel Baca, Luis Maria Baca, Ramon Baca, Prudencio Baca, Mateo Baca, Jesus Maria Baca, Juan Felipe Baca, Guadalupe Baca, Rosa Baca, Maria Josefa Baca, and Juana Paula Baca, at the aforementioned place of the Spring of the Holy Ghost, which, being examined by me, I made known to them the superior decree containing the favor granted to all those who were present. Being satisfied with what had been determined I put them in possession of said tract. They pulled up grass, threw stones toward the four points of the compass, and all exclaimed together in a loud voice, three times, "Long life to the King," as evidence of legal possession, which they took quietly without any opposition whatever. Pointing out to them the boundaries contained in the foregoing petition, as well as house-lots, enclosures, and tracts of land for cultivation in equal parts, without showing any preference, in accordance with the royal laws of the Recopilation of the Indies, which refer to resettlements, grants, donations, and in order that it may so appear, I signed, on said day,

month, and year, with my attending witnesses, in the absence of a notary, there being none of any description in this province, to all which I certify.

(Signed) YGNACIO SANCHEZ VERGARA.

Witness: (Signed) MIGL. MONTOYA.

Attending: (Signed) ANTO. ARMENTA.

The above is a copy of the original to which reference is made. In testimony whereof I affix my customary signature.

(Signed) YGNACIO SANCHEZ VERGARA.

SURVEYOR-GENERAL'S OFFICE,

TRANSLATOR'S DEPARTMENT,

Santa Fe, New Mexico, November 21, 1856.

The foregoing is a correct translation of the original on file in this office.

DAVID V. WHITING, *Translator.*

2. The papers in the case of the town of San Ysidro Grant. A similar certificate is on file with the clerk of this court. The papers are as follows:

Town of San Isidro grant. Reported No. 24. Offered in evidence by the United States. (R., 72.)

[Equivalent to seal second. (Seal.) One real. Seal third, one real, years one thousand seven hundred and eighty six and eighty-seven.]

To colonel DON JUAN BAUTISTA DE ANSA,

Political and military governor

of this province of New Mexico:

Antonio Armenta, the present senior justice and war-captain of the town of the Queres nation, and Salvador Antonio Sandoval, a re-enlisted soldier of this royal garrison, the two together, and each one for himself, appear

before your Excellency with the greatest submission and humility and in the most convenient manner to us, and state that both of us are without arable lands of our own to cultivate for the support of our families, nor pasture lands upon which to raise a few animals necessary for the same object. We therefore pray and request your Excellency to be much pleased to grant unto us, in the name of his Majesty, whom may God preserve, a vacant piece of land for cultivation and pasturage, situate at the termination of the league belonging to the town of Jemez on the southern side, to the boundary of the pueblo of [torn] on the northern side, on the east to the boundary of the land of the senior justice, Nerio Antonio Montoya, on the west the mountain of the Espiritu Santo Spring; that in doing as we request we will be entitled to your kindness and will receive grace and aid in our necessities, and we swear in due form that this petition is not made through malice, &c.

(Signed)

ANTONIO DE ARMENTA
And SALVADOR ANTONIO SANDOVAL.

DECREE.

In the city of Santa Fé, on the fourth day of the month of May, in the year one thousand seven hundred and eighty-six, before me, Juan Bautista Anza, colonel of cavalry of the royal armies of his Majesty, political and military governor of the province of New Mexico, came the foregoing petition, the contents whereof having been ascertained and admitted, and in attention to their request, and no injury resulting to any third party, I did and do grant, in the name of his Majesty, whom may God preserve, to the aforesaid Don Antonio de Armenta, the present senior justice of the jurisdiction of the Queres, and to the militia sergeant of the same jurisdiction, the grant of land the asked for, on condition

that they cultivate the same in conformity with the provisions of the royal decree, and which may not be included in the town of Zia and Jemez, or any other person thereto adjoining, and for the purpose of giving them the royal and personal possession in the terms before mentioned, I commission and grant such authority as is required by law to Don Nerio Antonio Montoya, senior justice of the jurisdiction of San Carlos de la Alameda, who, by virtue of this commission and previous citation and attendance of the adjoining residence, and no injury resulting to any third party, that he will place them in possession, measuring the number of *varas* it may contain in each direction, which will be noted in the proper deed of possession, as the place designated for the establishment of the proper monuments, which, in the absence of cement and mortar, are to be constructed of stone bound together with cedar timber sufficiently well set in the ground, and which shall be erected within the period of two months after possession, and if not complied with in that time they shall forfeit their right to the grant made, and upon the completion of all the originals will be returned to me to be transferred to the government books under my charge. I have so provided, ordered, and signed with my attending witnesses, in the absence of a royal or public notary, there being none of any description in this government, to which I certify.

ADDITION.

This grant is made with the further condition that the aforementioned *pueblos* of Zia and Jemez shall not be disturbed in their pre-emption and the use of the water.

(Signed)

JUAN BAUTISTA DE ANZA.

Attending:

FRANCISCO PEREZ, *Secretary*.

CRISTOVAL MARIA DE LARRANAGA.

POSSESSION.

At this point of San Isidro de los Dolores, on the sixteenth day of the month of May, in the year one thousand seven hundred and eighty-six, I, Don Antonio Nerio Montoya, senior justice and war captain of the jurisdiction of San Carlos de la Alameda, by virtue of the commission conferred upon me by Don Juan Bautista de Ansa, colonel of cavalry of the royal armies of his Majesty, political and military governor of this province of New Mexico, being at the aforementioned place, having summoned the natives of the *pueblos* of San Diego, Jemez, and Zia, who are adjacent residents, and having measured the league belonging to them with two hundred and sixty-two *varas* more, with which they expressed themselves satisfied, some of the Indians having planted some small patches, and not to offend them, I allowed them to retain possession of them; with your Excellency's permission, I also proceeded to the *pueblo* of Zia and measured the league belonging to that *pueblo*, with the further amount of one thousand six hundred and thirty-two *varas*, which the Indians purchased from Juan Galvan, as shown by the title deeds of said purchase, and to the aforementioned lands I assigned thereto and added one thousand *varas* more, the Indians having asked me for it, and the said Indians having shown to me a sale made by the late Miguel Montoya, which boundaries are in a *cañon* commonly called Elrito Salado, that this *cañon* is the pasture ground and summer range for their cattle, the boundaries of which land are the same called for in the title deeds, on the north a red hill, on the south a white table-land, and on the east the Jemez river itself; and having informed myself of the contents of the two deeds, and having found in them only what has been above stated, I gave the two *pueblos* to understand what belonged to each of them, that of Zia what they had acquired by purchase, and that of Jemez what had been

granted to them by his Majesty, and believing that neither of the *pueblos* were entitled to the piece of ground which is unoccupied, and it being the intention of our sovereign that his lands shall be settled upon by his subjects wherever there may be any surplus, and finding no impediment, and by virtue of the commission which I hold from his Excellency, I proceeded to the land lying between the two *pueblos*, which, upon being measured, was found to contain two thousand nine hundred *varas*, and no person appearing who claimed a better right, both *pueblos* being present, as well as the senior justice, Antonio Armenta, and the militia sergeant, Salvador Antonio Sandoval, and being informed of all the circumstances, I took them by the hand, walked with them over the land; they pulled up grass, threw stones toward the four winds of heaven, and we all exclaimed three times, "Long life to the King, our sovereign (whom may God preserve)," in proof of legal possession, which I gave them, and they received quietly and peacefully, without any opposition, the boundaries whereof are as follows: On the north the lands of Jemez; on the south the lands of the *pueblo* of Zia; on the west the mountain of the Espiritu Sancto Spring, at the place commonly called "Los Bancos;" on the east the lands of the aforementioned senior justice, Antonio Nerio Montoya, which is the road leading from Cochiti to Jemez, and having assigned their boundaries, and no injury resulting thereby, and being satisfied with them, I directed them to erect permanent boundaries; and in order that it may so appear, I, Nerio Antonio Montoya, as commissioner and senior justice, at the same time signed, with two attending witnesses, with whom I act in the absence of a royal or public notary, there being none in this kingdom, to which I certify.

(Signed)

NERIO ANTONIO MONTOYA.

Witness: TORIBIO GONZALES.

Witness: SALVADOR LOPEZ.

This copy agrees with the original, to which reference is made, from whence I, Nerio Antonio Montoya, senior justice and war captain, took this copy at the verbal request of the party, which is true and correct, my two attending witnesses being present when it was made. It is contained on three written pages, and is taken at this *pueblo* of Zia on the sixteenth day of the month of May, in the year one thousand seven hundred and eighty-six, signed with my hand in the absence of a public or royal notary, there being none in this kingdom.

It is (torn) stamped paper in this said kingdom of New Mexico, to which I certify.

To this copy I attach my customary signature.

(Signed) NERIO ANTONIO MONTOYA.

Witness:

(Signed) TORIBIO GONZALES.

Witness:

(Signed) SALVADOR LOPEZ.

SURVEYOR-GENERAL'S OFFICE,
TRANSLATOR'S DEPARTMENT,
Santa Fe, New Mexico, June 7th, 1859.

The above is a translation of the original on file in this office.

DAVID V. WHITING, *Translator.*

3. The papers in the surveyor-general's office in the grant to the Town of Cañon de San Diego. A similar certificate is on file, and the papers are as follows:

*Town of Cañon de Santiago grant. Reported No. 25.
Offered in evidence by the United States. (R., 72.)*

[Corrected. Two reales. Copy. (Seal.) Seal third, two reales for the year one thousand seven hundred and ninety-eight and ninety-nine.]

To the lieutenant-colonel and governor of this province:

Francisco and Antonio Garcia, brothers and interpreters of the Navajo nation, in unison with Miguel Garcia, Joa-

quin Montoya, Salvador Garcia, José Manuel Garcia, Juan José Gutierrez, Juan de Aguilar, Blas Nepomuceno, Garcia Bartolome Montoya, José Montoya, Tomas Montoya, Juan Domingo Martin, José Gonzales, Salvador Lopez, Antonio Abad Garcia, Miguel Gallego, Marcus Apodaca, José Miguel Duran, and José Maria Jaramillo, appear before your Excellency in the most approved manner the law requires and may be necessary and state that a quantity of vacant and uncultivated land lies in the Cañon of San Diego, adjoining the boundaries of the lands belonging to the Indians of the town of Jemez; and whereas the settlement thereof would be beneficial to the province and advantageous to our present families and descendants to be settling upon these lands with our property and cultivating the same, we pray your Excellency to be pleased to grant this aid and settlement that we petition for to the persons herein mentioned, being pleased at the same time to order in the name of his Majesty (whom may God preserve) that we may receive from the boundary beyond the lands granted to the Indians of the *pueblo*, our petition calling for from east to west to the middle *arroyo*, called Los Torreones, and the line running from north to south to the Vallecito de la Cueva, which is in front of the water-fall and in a transverse line from said middle *arroyo* to the Rito de la Jara. We also protest that we will not injure with our persons or stock a few trees which the Indians claim as their own, although they are planted beyond the limits of the lands which belong to them. Therefore we humbly pray your Excellency to be pleased to order our request to be complied with, granting us the vacant land asked for, by doing which we will receive grace, and we swear in due form that our petition is not made through malice; and one signed, the others not knowing how.

(Signed)

JOSÉ MIGUEL GARCIA.

DECREE.

Santa Fé, March 6th, in the year one thousand seven hundred and ninety-eight. In view of the foregoing petition made by José Miguel Garcia and the other citizens therein mentioned, in regard to settling in the *cañon* known as San Diego de Jemez, *where the interpreters of the Navajo nation were temporarily stationed*, I grant to them the aforesaid land in the name of the King, our sovereign, with the express condition that it is to be settled by at least twenty citizens; that the lands are to be distributed in equal parts, and that they are not allowed or authorized for themselves or their heirs to sell or dispose of the lands granted to them, it being his Majesty's will according to his last orders that the lands should descend from father to son or his heirs in a direct line, and if any colonists to suit his own convenience should desire to remove under any pretext whatsoever, his possession or share shall remain for the benefit of the one taking his place, in which case the residents of the same place or persons marrying there shall be preferred, and for which no remuneration whatever shall be exacted by the person voluntarily absenting himself or expelled or banished by the authorities on account of his bad conduct. That besides this subdivision above mentioned a sufficient amount of land is to be left for pastures and watering places as well as to allow for the increase of the settlement if such may be the case (which is likely to occur) — (torn) — order the chief justice of that jurisdiction, Don Antonio Armenta, to place the parties in possession under the rules prescribed by law.

(Signed)

CHACON.

POSSESSION.

In the Cañon of San Diego de los Jemez, on the fourteenth day of the month of March, in the year one

thousand seven hundred and ninety-eight, I, Don Antonio de Armenta, chief justice of the *pueblo* of Jemez, by virtue of the authority conferred upon me by my superior chief, Don Fernando Chacon, Gentleman of the Order of Santiago, lieutenant-colonel of the royal armies, political and military governor of this province of New Mexico, being at the aforementioned place, and having summoned the natives of said *pueblo* of Jemez, to whom having measured one league belonging to them, I found a surplus of two thousand one hundred *varas* which they had, before arriving at the Cañon de San Diego, all of which they claimed as their own without having any right to them in any manner, and believing that they had no right to it, and knowing that it is the wish of our sovereign that his lands be settled upon by his subjects in whatever a surplus may be found, and finding no impediment whatever, and using the authority in me vested, I proceeded to the surplus lands, and finding no one with a better title, and Francisco Garcia, Antonio Garcia, Navajo interpreters, Miguel Garcia, Joaquin Montoya, Salvador Garcia, José Manuel Garcia, Juan José Gutierrez, Juan de Aguilar, Juan Blas, Pomuceno Garcia, Bartolomé Montes, Tomas Montoya, José Montoya, Juan Domingo Sangil, Salvador Lopez, José Gonzales, Antonio Abad Garcia, Miguel Gallego, Marcus Apodaca, José Miguel Duran, and José Jaramillo being present, all interested and well informed in regard to the matter, I took them by the hand, walked with them over said lands, they pulled up grass, threw stones toward the four winds, and we all cried at once three times, "Live the King, our sovereign (whom may God preserve)," in proof of legal possession, which they received quietly and peaceably, without any opposition whatsoever, because after concluding with all these ceremonies I delivered to each one of said settlers three hundred *varas* with which they were well satisfied, leaving the remainder for

the benefit of all, and without any other land being left for any other person to enter, and in order to prevent any other from coming in to meddle and create difficulties between the citizens as well as the Indians, I gave them to understand which were their boundaries, which are: On the north the Vallecito de la Cueva; on the south the termination of the Indian league; on the east the boundary of Vallecito; and on the west the opening towards the middle *arroyo* and the Rito de la Jara. And no injury resulting to any one, they were all satisfied, and in order that it may so appear, I, the said chief justice, signed with my two attending witnesses, in the absence of a public or royal notary, there being none within the limits of all this government, to which I certify.

(Signed)

ANTONIO DE ARMENTA.

Witness: (Signed) SALVADOR LOPEZ.

Witness: (Signed) JOSÉ MIGUEL GARCIA.

This copy agrees with its original, to which reference is made and from whence I, the said Don Antonio de Armenta, chief justice, took this copy at the verbal request of the parties. It is correct and genuine and my attending witnesses were present when it was made and compared and the original remains in the archives in charge of the governor, Don Fernando Chacon, and it is made at this *pueblo* of Jemez, on the sixteenth day of the month of March in the year one thousand seven hundred and ninety-eight. Signed with my hand in the absence of a public or royal notary, there being none in this government; to which I certify.

In testimony of the truth I hereto attach my customary signature.

(Signed)

ANTONIO ARMENTA.

Witness: (Signed) SALVADOR LOPEZ.

Witness: (Signed) JOSÉ MIGUEL GARCIA.

SURVEYOR GENERAL'S OFFICE,
TRANSLATOR'S DEPARTMENT,
Santa Fe, New Mexico, June 3, 1859.

The foregoing is a correct translation of the original on file in this office.

DAVID WHITING, *Translator.*

These grants have all been confirmed and patented, and the preliminary survey, upon which the claim is based for the grant in question, shows substantial conflicts, and they were offered in evidence for the following reasons:

To show the exercise of the right of disposition on the part of the Spanish government of lands lying within the outboundaries of this pasture grant.

To show that the land included within this alleged grant was vacant and unclaimed.

4. The next offer (R., 72-73) was the official map from the surveyor-general's office, Zia, Santa Ana, and Jemez Map, marked "TT."

Mr. WILL. M. TIPTON, the expert for the government, testified as to the conflicts with the grant in question, and his testimony, being short, should be read when the plat is examined. (R., 73.)

5. The next offer was the papers in the cases of the *pueblos* of Zia, Santa Ana, and Jemez, for confirmation of their league grants, which I have had copied, and the proper certificate filed with the clerk of this court. (R., 76.)

DIEGO BACA testified on behalf of the defendants that he was sixty-nine years of age, and has resided at the Ojo del Espiritu Santo since 1869, and has known the spring

since 1842; he was at the spring then with his father, who had been sent to that country as commissioner to treat with the Navajos, and there was nobody occupying it at that time. There were neither horses nor cattle being pastured there, because the Navajos would not allow it. About a year afterwards the Jemez Indians were pasturing their stock at the Mesa de Vallecito. In 1852 the witness had occasion to pass through the lands and they were not then occupied by the Indians. Since he has been there everybody has pastured stock from the *pueblos* to the Rio Puerco. The land was not occupied in 1842 by anyone. Witness when very young knew Luis Maria Cabeza de Baca, who was his grandfather. The remainder of his testimony is in relation to the geneology of the Baca family. (R., 77-81.)

FRANCISCO ARCHIBEQUE testified on behalf of the defendants that he was sixty-five years old and lives at Algodones, and knows where the *pueblos* of Zia, Santa Ana, and Jemez are. Knows the Vado de Piedra, on the Rio Puerco, and knows the stretch of country from that point on the south to the Ventana on the north, and between the *pueblos* of Jemez and Zia and the Rio Puerco; also the Ojo del Espiritu Santo. Has known them since he was about twelve years old, and has herded sheep all over the country east of the Rio Puerco ever since he was ten years old until last October, except when the Indians were hostile. When he first went to the tract some Mexicans were herding sheep and cattle on it, but he can not say that anybody was there permanently. The Indians from Zia sometimes would reach up as far as the Cañada

de las Milpas. They would occasionally have some farms and then go back to Rincones Zia, just north of the *pueblo*. Had seen some loose animals of the Jemez Indians up as far as the Peñasco, but never saw any ranch there. There were ranches for sheep breeding belonging to Jesus Trujillo, but the Indians had no ranch there. The Jemez Indians kept cattle north of their *pueblo* to the mountains, and he has seen their horses there many times. The Indians of Santa Ana pastured their horses and cattle on the *mesa* north of the *pueblo*, which *pueblo* lies the farthest east of the three. He never saw the Santa Ana Indians pasturing their horses as far west as the Puerco, and never knew that anyone was prohibited or disturbed from pasturing animals on the land lying from the Zia *pueblo* to the Puerco river and from the Ventana to the Vado de Piedra. Witness was never permitted on the land except from the Cañada de las Milpas to the river on this side; he never heard of permission being granted to anyone, but all people pastured the land with their sheep, horses, cattle, and burros. Witness designated a number of places at which ranches had been established and houses erected. The Cañada de las Milpas is about five miles from the *pueblo* of Zia to the west, and has seen cultivation there—watermelons, some muskmelons, pumpkins, and some strips of corn planted by the Indians of Zia. On cross-examination witness testified that the Indians prohibited him from going on the lands between the Cañada de las Milpas and the *pueblo* of Zia. (R., 81-85.)

SEMON ARCHIBEQUE testified on behalf of the defendants that he was fifty-nine years of age, resides at Algo-

done, and is acquainted with the tract of land between the *pueblos* of Zia and Jemez and the Puerco river, and knows the place called Ventana and the Vado de Piedra. Has known the land lying between these points since 1853, when he was up there herding sheep, and at that time the land was unoccupied. The Cañada de las Milpas empties into the Rio Salada at the south. Sometimes strips of the Cañada de las Milpas were occupied by farms for cultivation and sowed with corn and water-melons. Has known the place called the Peñasco since 1853, at which time no one was occupying it. Afterwards he saw some sheep-lambing ranches there belonging to various persons. There were no improvements. During the years that he was pasturing there the Indians of Zia, Santa Ana, and Jemez pastured their cattle from the Mesita de la Vallecita to the Chihuahua. Knows the Cañada de Achavarria. (R., 85-88.)

ESQUIPULA NIETO testified on behalf of the defendants that he lives at Rio Puerco, and was born in 1822, and has resided at the Puerco since 1874, living at Bernalito prior to that time. Knows the tract of land extending from the *pueblos* of Zia and Jemez to the Puerco river and from the Ventana on the north to the Vado de Piedra on the south. Witness's limited knowledge of the country seems to have been acquired since 1874. (R., 88-89.)

JESUS TRUJILLO testified on behalf of the defendants that he was seventy-eight years of age, and has resided at the Cañon de San Diego for that length of time. Is acquainted with the country from the *pueblos* of Jemez

and Zia to the Puerco river; knows the place called Ventana, also the Vado de Piedra, and has known all that country since he was born, and since he has been grown has been over the country frequently, and since he was twenty-five years old has been quite familiar with it. Has been frequently into the *pueblos* when he was a boy; they had live stock then and pastured them toward the *mesa* and surroundings, and they did not pasture away from that point on account of the wars with the Navajo Indians. In 1840 saw very few pasturing sheep and horses between the *pueblos* and the Puerco river, but those that pastured there were Mexicans. He was the first one to occupy the Espiritu Santo in 1846-47, and for eight or ten miles on either side there was nobody occupying it, though there were a few sheep herded around there. The Indians were in the habit of pasturing their animals to the hills and mountains and to the Jemez river, which runs to the south. He lived at the Ojo del Espiritu Santo for four years and during that time the Indians did not pasture their animals near this spring. He left the spring because notice was served on him that the land and spring belonged to Tomas Baca. (R., 89-92).

POLITO MONTOYA testified on behalf of the defendants that he lives at Albuquerque and is forty-six years old. Knows the tract of land lying between the *pueblos* of Jemez and Zia and the Rio Puerco. He formerly lived at the Jemez Hot Springs. The land lying between the Rio Puerco and the *pueblos* is about twenty-five miles from the Hot Springs. Witness lived on the land lying between the *pueblos* and the Rio Puerco, first at the Ventana

and then at the Cañoncito, living there from 1876 to 1880. Lived at Jemez Hot Springs from 1880 to 1890. While living at the Ventana he occasionally traveled down as far as the Ojo del Espiritu Santo. There were some settlements at Ventana, consisting of twenty or twenty-five families. Between the Ventana and the Ojo del Espiritu Santo there was nothing. Don Diego (Baca) was there with his family, and the rest of the land was occupied with stock belonging to Mexicans. Did not know where the Indians were pasturing their stock. (R., 92-95.)

WILL M. TIPTON, the government's expert, testified on behalf of the defendants: Identified the plat marked "Pueblo Claim 'TT'" in the office of the surveyor-general, and says that it bears no mark that it came into the office of the surveyor-general in 1855, when the archives were turned over to him; the document is not an original archive, but was filed with the papers in the case. (R., 95.)

This was all the testimony in the case.

BRIEF AND ARGUMENT.

The Court of Private Land Claims rejected this grant in an opinion written by Mr. Justice Stone, which the clerk failed to attach to the transcript sent forward, but which is attached to this brief as Appendix I, wherein it is held that the grant to the Indians of the *pueblos* of Zia, Santa Ana, and Jemez was for pastoral purposes only, and did not, by its terms or intent, convey anything more than a license or permission for that purpose; that such use was subject to be terminated by any act on the

part of the government inconsistent therewith, and by virtue of its exercising the right of disposition over certain portions of the same, and by virtue of the transfer to the United States, the permission to use the same for these purposes was revoked.

On behalf of the appellants it is contended that the grant was intended to and did convey to the *pueblos* named an absolute and unconditional title to the land, and, although it was specified to be for pastoral purposes, the use which was to be made of it did not affect the character of the estate conveyed thereby.

Counsel for appellants insists that the governor of the territory of New Mexico, under the Laws of the Indies, in force at the time this grant was made in 1766, had full power to pass the title to these lands, irrespective of the use which was to be made of them. Without discussing at this point the powers of the ancient governors, I desire to call to the attention of the court the title papers themselves, with a view of determining therefrom, if possible, the intent of the parties. Appellants, in making up the transcript, have failed to include therein a copy of the original text in Spanish of the *testimonio*. I have had the same copied and carefully compared and attached to this brief as Appendix II.

Commencing with an examination of the translation of the title papers (R., 14), we find that Felipe Tafoya, a lawyer of the town of Santa Fé, representing the three *pueblos* of Zia, Santa Ana, and Jemez, in the name of Cristoval, the Indian governor of the *pueblo* of Zia, and Thomas, chief war captain of the said *pueblo*, by virtue

of an appointment from the inhabitants of their republic, states that from their foundation "they considered as their pasture ground in the vicinity of their *pueblos* a valley commonly called the Holy Ghost Spring," and that in urgent cases the royal garrison had used the same for the pasturing of horses, and they being aware of parties desiring to acquire the same by grant, which would cause them great injury, as they had a great many cattle, sheep, and horses, and had no other place to pasture them, particularly the *pueblo* of Zia, wherefore they prayed that the governor, in the name of his Majesty, "be pleased to declare said valley to be the legitimate pasture grounds and pasture of the said *pueblos*," and requesting that the boundaries be designated as named in the petition.

Upon this petition governor Cachupin, on June 16, 1766, referred the matter to Bartolomé Fernandez, chief *alcalde* of said *pueblos*, to examine the boundaries mentioned as of the Holy Ghost Spring and to report the leagues the same would embrace from north to south and from east to west, and whether the *pueblos* had the cattle, sheep, and horses proportional to the boundaries asked for their grazing, and also whether any citizens were damaged by the boundaries asked under any prior valid grant and possession. (R., 15.)

The *alcalde* reported that no prejudice would result from granting the same, and also the distances requested. (R., 15-16.)

Following this, on August 6, 1766, governor Cachupin made the grant, wherein he states, after the formal parts,

"I would grant and I did grant, in the name of his Majesty (God preserve him), the aforesaid lands for pasturing the stock and horses of the aforesaid three *pueblos* of Zia, Santa Ana, and Jemez," designating the boundaries, upon the condition that in cases of necessity the royal garrison might be permitted to pasture their horses within the same; stating further that "they will hold the same with legitimate title under this royal grant, so that they be not molested by any Spanish citizen or citizens, taking their stock thereupon, deeming the pasturage to be common," concluding the grant in the usual form. (R., 16-17.)

In defining how the property should be held, it is contended by the government that appellants' translator has given a legal construction, rather than a literal translation, to the language contained in the original. The Spanish text in the granting clause is, "*para que lo posean con derecho legítimo,*" which should be translated, "they will hold the same with legitimate right of possession."

If governor Cachupin had intended to transfer the absolute title and dominion to the same, he would have adopted appropriate words for that purpose, such as "*para adquirir legítimo derecho de propiedad y señorio,*" which words, "*propiedad y señorio,*" are somewhat equivalent to the English words, "fee simple."

Again, it will be noticed that the granting decree does not provide for the right of succession on the part of any one, nor does it provide, as is usual, that the property shall be occupied continuously for the space of at least

four years, before the party would be entitled to solicit a complete title thereto. In all grants, whether the land was to be used for pastoral or other purposes, when it was intended that the highest grade of title should ultimately be passed, apt words were used in the granting decree to express that intent, which appear to be absent from governor Cachupin's decree, and it must be admitted that he was a man fully competent by education and ability to adopt words clearly expressing his intent. Construing the language of the petition, in connection with the language of the granting decree, I am led to the conclusion that the absolute title and dominion, with the right of disposition in the grantees and the right of succession in any one, was not anticipated or intended to be conveyed in this grant.

The act of possession is in the usual form and throws no light upon the estate sought to be conveyed.

At the trial in the court below of the case of *Roman A. Baca v. United States* for the confirmation of the Felipe Tafuya grant, which is now pending on appeal in this court, No. 108 on the present docket, the Court of Private Land Claims had occasion to reexamine its opinion rendered in this case, and therein confirmed its construction of the title papers presented here, after a careful comparison of the recitals contained in the decree of governor Cachupin with those in the decree of governor Mendinueta in the Baca case, which was a grant for pastoral purposes to Felipe Tafuya and others. A copy of this opinion is attached to this brief as Appendix III.

In the Baca case it appears that Felipe Tafoya (also the attorney for the Indians in their petition in the present case), representing himself and two others, in December, 1766, applied by petition to the governor of the province of New Mexico for a grant of land for the purpose of pasturing their stock, and on December 3 governor Cachupin, the same governor who made the grant to the Indians, made a grant in accordance with the prayer of the petition, translation of which is fully set forth in the opinion of the court (Appendix III). Subsequently, in 1767, Felipe Tafoya, as attorney for himself and the Chaveses, presented another petition to governor Mendinueta, asking for the land on behalf of himself and the said Chaveses. In his petition he referred to the grant made by governor Cachupin in 1766 to them for pastoral purposes, and asked that they be given title to the land, it being fit only for grazing and pasturage. June 15, 1767, governor Mendinueta directed *alcalde* Bartolomé Fernandez to report upon the same.

June 16, 1767, the *alcalde* made his report, upon which the governor made the grant of one league by courses, stating "which commission and grant I did make to them, their children and successors, under the condition that they shall settle the land with their stock for the four years required by law, to enable them to acquire the legal title and dominion," etc. This grant was only for pastoral purposes, and the government contended that it came within the principle announced in construing the title papers in the case at bar. Mr. Justice Murray, for the court, proceeded to distinguish the two, upon the wording of that

portion of the granting clause of the two documents wherein the language is different.

In the Tafoya grant the Spanish wording is "*para adquirir legítimo derecho de propiedad y senorio*," which he translates as "in order to acquire legitimate right of property and dominion;" whereas in this case the granting clause is "*para que lo posean con derecho legítimo*;" and based upon the fact of the difference in wording in the granting clause of the two grants, and also that the right of succession was provided for in the Tafoya grant, and the conditions under which legal title might be solicited were set forth, the court determined that it was the intention to pass to Felipe Tafoya and the Chaveses such an estate as would enable them, by complying with the conditions of possession, to perfect their title, and in respect of the grant to the Indians, it failing to recite that the property and dominion was to be transferred, failing to provide the right of succession, and failing to provide that the conditions of occupation must be fulfilled that perfect title might be acquired, the court was induced to hold that it was not the intention of governor Cachupin nor the Indians that anything more should pass than a license or permission to use the land for pasturage, which was subject to revocation by the sovereign government and forfeiture by the Indians in case of non-user and abandonment. And in view of this it is contended that the various citations by counsel for appellants of the Laws of the Indies in relation to the rights of Indians and citizens have no application.

It appears in evidence that as early as 1788, Francisco and Antonio Garcia petitioned for the Cañon de San Diego, and the right to cultivate and occupy the *cañon* was granted them; that in 1798 the said Garcias in conjunction with eighteen others petitioned for a large grant, including the former grant to them, which large grant is partly within the outboundaries of the pasture grant to the Indians and has been confirmed by congress. These two latter grants are the subject of contention in the case of Amado Chaves *v.* United States, No. 4, on the present docket, which immediately precedes this case. It also appears that in 1786, governor Anza made a grant to Antonio Armenta and Salvador Antonio Sandoval, for what is called the town of San Ysidro grant, which has been confirmed and patented by congress and lies almost wholly within the outboundaries of this grant. Also that in the year 1815, Luis Maria Cabeza de Baca petitioned for the land covering the Holy Ghost Spring, which is the central point mentioned in the pasture grant to the Indians; this grant has also been confirmed and patented by congress and lies wholly within the outboundaries of the grant claimed by them. The title papers of all of these grants appear in the statement of this case.

It is apparent from the recitals in the title papers and the findings of the officials making these grants that the title of the Indians was not recognized, and by virtue of the making of these grants the license that had been given them was necessarily revoked, and the proceedings therein are inconsistent with the idea that these officials

from 1788 to 1815 recognized any greater title in the *pueblos* than a mere license or permission to use the land for the purpose stated in the grant to them.

Therefore a consideration of the language of the title papers themselves and the exercise of the right of disposition by the various governors of the province from 1786 to 1815 over a large portion of the land lying within the outboundaries of the grant claimed by the Indians justifies the conclusion that whatever rights they acquired by their grant were usufructuary and nothing more, subject to revocation by the sovereign, and such right of revocation was exercised in making these later grants.

I respectfully submit that the judgment of the Court of Private Land Claims was correct.

Respectfully submitted,

MATTHEW G. REYNOLDS,
Special Assistant to the Attorney-General.

JOHN K. RICHARDS,
Solicitor-General.

APPENDIX I.

*Opinion of Court of Private Land Claims, Stone, A. J.,
rejecting the grant.*

On behalf of the court I am authorized to announce its conclusion upon hearing and submission of this case.

Petitioners, the three Indian *pueblos* of Zia, Santa Ana, and Jemez, seek confirmation of title to a certain area of land, outside their *pueblos*, alleging a grant therefor by the governor-general of the province of New Mexico, in the name of the King of Spain, in the year seventeen hundred and sixty-six, as a perfect grant of the lands for pastoral purposes, and averring occupation and use thereof for such purpose to the present time.

Many grounds of defense are set up by the United States, and others are interposed by certain parties defendant claiming adversely under titles to tracts embraced in whole or in part within the boundaries of the claim in issue.

The principal questions we have deemed necessary to consider are :

First. What is the character of the title shown; perfect or imperfect? And

Second. Is it a grant of title to the land itself, or only a usufruct, the right of pasturage thereon?

Numerous objections were taken upon hearing to the muniments of title offered by petitioners, as well as to the character of the possession and uses of the lands, but we do not pronounce these objections sufficient to defeat the validity of the title to the estate granted, whatever

its character may be. Hence it may be said that if the title could be determined to be a grant of the land itself the proofs might not be wanting to place it in the class of what we term perfect grants. Be that as it may, however, it is not believed to be necessary to pass upon these objections to the evidence absolutely, since, in view of our conclusion touching the nature of the estate or right granted, the regularity of the proceedings may be conceded.

The character of the grant—that is, the nature of the estate granted—is to be tested chiefly, if not wholly, by the language employed in the prayer of the petitioner embracing the object or thing prayed for and by the terms of the granting clause in the grant document. Therein we are to look for the purpose and intent of both the grantee and grantor.

The petitioners to the governor, after reciting that they “from their foundation have considered as their pasture ground in the vicinity of said *pueblos* a valley commonly called the Holy Ghost Spring, and that in some urgent cases the same, as is known, is used as a pasture ground for the horses of the royal garrison, and the said parties being aware that the said valley has had in its vicinity some applicants to acquire the same by grant, which will cause them very great injury, as they have considerable cattle, sheep, goats, and horses for the royal service, and not having any other place in which to pasture them,” conclude as follows:

“In consideration of all of which I ask and pray that your excellency, in the name of his Majesty (whom may God preserve), be pleased to declare said valley to be the legitimate pasture grounds and pastures of the *pueblos*, directing that the boundaries thereof be designated to them,” etc.

Upon receipt of the petition the governor formally ordered the chief *alcalde* of the *pueblos* to examine the

boundaries "where they state they pasture their stock and horses," and report the area embraced, "and whether the aforesaid three *pueblos* have the cattle, sheep, goats, and horses proportional to the boundaries asked for for their grazing."

The report of the *alcalde* sets forth the boundaries and that they did not contain, to his knowledge, any lands suitable for cultivation, being "only suitable for pasturing and live stock, which is abundant in said *pueblos*."

Upon this report the governor issued the granting document, the granting clauses therein being as follows:

"In the town of Santa Fé, on the sixth day of the month of August, one thousand seven hundred and sixty-six, I, Tomas Velez Cachupin, governor-general of this kingdom of New Mexico, in view of what is petitioned for by the three *pueblos* of Santa Ana, Zia, and Jemez, of the Queres nation, and of the report which their chief *alcalde*, Bartolomé Fernandez, makes, that they have held said lands for their live stock, which at present is abundant, without having any other places in which to pasture them except those referred to in their petition, together with the small watering places mentioned in said report, declared that I would grant, and I did grant, in the name of his Majesty (God preserve him), the aforesaid lands for pasturing the stock and horses of the aforesaid three *pueblos* of Zia, Santa Ana, and Jemez, with the boundaries, etc., "with the condition and stipulation that in case of necessity the horses of this royal garrison of Santa Fé may and shall be kept in said valley, the same being a place where they have been accustomed to graze; wherefore the aforementioned three *pueblos* are to place no obstacle in the way nor claim damage therefor; and the aforementioned boundaries being for the future considered those of the aforementioned three *pueblos*, they will hold the same with legitimate title under this royal grant so that they be not molested by

any Spanish citizen or citizens taking their stock thereupon, deeming the pasturage to be common." Possession was thereupon given with the usual formalities of juridical possession, "under the conditions mentioned in the aforesaid grant."

It will be seen by the foregoing that the avowed and expressed purpose sought and asked by the petitioners was the right to pasture their live stock on the land in controversy, and free from molestation by other parties seeking grant of the lands or like privilege of pasture, except the government itself, which reserved the right of common pasturage for its cavalry horses.

The governor was not asked to grant the land by the usual formula of words therefor, but the language he used is in the following precise form, viz: "In consideration of all of which I ask and pray that your Excellency * * * be pleased to declare said valley to be the legitimate pasture grounds and pastures of the *pueblos*." And the words of the grant state expressly that it is made for that specific purpose.

These *pueblos* were then living upon and cultivating each a grant of land of four leagues, respectively, which had been granted to them nearly a hundred years before and upon which they are still living.

Is, then, this grant anything more than a royal concession of the right of pasturage upon the crown lands, and in common with a like right reserved by and for the government itself?

Looking to the language employed in the grant documents, the entire transaction, and the subsequent conduct of the government respecting the same land, the character of the grant as a mere pasture right seems evident. In 2 White, page 287, the law of Spain, relating to grants of privileges of pasturage, is laid down as follows: "The concession of a great extent of land for the rearing and pasture of cattle constitutes no more than the usufruct of it for the time agreed upon, but the grantee has not nor

never had the remotest right to solicit the proprietorship, for there is no law or regulation upon which to found it; and consequently the land does not go out of the class of public lands, since it is the same as if were held on rent."

The area of land embraced in the boundaries of the grant as claimed amount to something over 276,000 acres, and may therefore be properly termed, in the language above quoted, a "concession of a great extent of land for the rearing and pasture of cattle," and hence the law quoted seems quite applicable thereto.

Additional weight is lent to the view that this is a revocable grant of the pasturage usufruct merely from a consideration of the fact shown by the record that twelve years afterwards, in 1778, the same government, that of Spain, made the San Diego grant, lying wholly or in part within the limits of the grant here claimed, and that afterwards other grants were made of portions of the same grant, notably that of the Espiritu Santo or Holy Ghost valley, to one Baca, which has been confirmed by the congress of the United States, and which grant lies wholly within the boundaries of the grant in question.

It seems quite unreasonable to suppose that if this area in controversy had been granted as an estate in fee to the land the same granting authority would have deliberately granted a portion of the same land to a third party only twelve years after the former grant, repeat a like act in 1815 and afterwards, and that, too, of land situate near the capital, grazed upon by the royal horses of the capital garrison, and the local *alcaldé* directed in every case to report officially whether the land proposed to be granted was unoccupied or that the grant would be to the injury of third parties.

This grant was prayed solely as a pasturage right; it seems to have been granted for that purpose alone, and it appears that the government afterwards treated it as

such and disposed of the paramount title to a large part of the land upon the same view.

From these facts and considerations the court concludes that this grant was intended and made as a privileged right, license, or royal concession for the use and purpose of pasturage merely, revocable in its nature, and vested no title otherwise in the grantees, and therefore not the subject of confirmation by this court.

One other question only arises requiring determination. What is the term of existence of this license or usufructuary right?

Ordinary grants of privilege or license of user, where no time is expressed limiting the duration unless sooner revoked, as a rule expire with the death of the grantor. In this case the grant, being made by the crown, would not necessarily terminate upon the physical death of the individual-granting sovereign, but when Mexico threw off the Spanish yoke and achieved an independent government the political death of the Spanish sovereignty in this territory must have determined the lifetime of the revocable grant in this case. Even if it could be said, in the language of certain indictments for homicide, that it "lingered, and lingering did live" on, under the Mexican rule most certainly it became extinct at the date of the treaty of Guadalupe Hidalgo.

For these reasons the decree of the court is that the petition of the claimants be dismissed. So ordered.

APPENDIX No. II.

Spanish text of title papers.

TESTIMONIO—CORREGIDO.

Señor Gobernador y Capn. Gral.:

Phe. Tafoya, procurador de esta villa de Santa Fee, parezco ante VS. en toda forma de dro., por y en nombre de Cristobal, Yndio govor. del pueblo de Zia y de Tomas, capitan mayor de la grra., de dho. pueblo, qe. esto bienen con comision de su casique y de los demas de su republica, y digo, señor, en nombre de los dhos., y de los del comun de los pueblos de Santa Ana y del de los Xemez, qe. estos desde su fundacion han reconocido por sus hejidos en las ynnediaciones de dhos., sus pueblos, un valle qe. comunnte. llaman el Ojo del Espiritu Santo, i este en algunos casos urgentes sirve para ejidos de la caballada de este real presidio como es constante y sabedores los dhos. qe. dho. valle á tenido algunos pretendientes vecinos para adquirirlo de merced, lo que sera para los dhos. de grandisimo daño, pues, se hallan con cresidos ganados mayores y menores y caballada para el real servicio, y no tener otro paraje en donde poderlo hacer, yn particular los del pueblo de Zia, pues estos todos lo mas de sus labores son temporales, y parte de ellos en las cañadas de dho. valle ynnediatas á dho. su pueblo. Por todo lo qual a VS., pido y supco., en nombre de (S. M., q. D. G.,) sea mui servido de declarar por sus legitimos hejidos y pastos consejebles dho. valle mandando se les señalen sus linderos que es por el oriente los dhos. pueblos, y por el poniente la ceja del rio Puerco, y por el norte un paraje

que llaman la Bentana, qe. es donde viven unos Apaches Navajoses, i por el sur con las tierras de los vecinos pobladores de dho. rio Puercio, que en mandar hacer VS. como yebo pedido recibiran los dhos. mis partes merced con justicia que pido y juro en nombre de los dhos. no ser de malicia este, este será.

PHE. TAFOYA.

DECRETO.

Villa de Sta. Fee, diez y seis de Junio de mil setecientos sesenta y seis, visto lo pedido por las republicas de los tres pueblos de Zia, Santa Ana, y Xemez, de la nacion Queres, contiguos unos y otros á la rívera del rio de Santa Ana, i para determinar segun justicia doi comision á el alee, mayor de dhos. pueblos Dn. Bartolomé Fernandez, para que reconociendo los linderos qe. expresan del Ojo del Espiritu Santo en donde refieren mantener sus ganados y caballadas, me informe las leguas que contendran de norte á sur, y de oriete á poniente, y si los dhos. tres pueblos tendran ganados mayores y menores y caballadas que equivalgan á los linderos que piden para sus pastos, como así mismo si es ó no perjudicado algun vecino ó vecinos con dhos. linderos por antecedente merced y posesion legitima, qe. tengan, lo que executara dho. alee, maior con la verdad posible, y por este así lo probei, mande y firme. Yo Dn. Thomas Velez Cachupin, govor. general de este reyno, con dos testigos de mi assa. a falta de escribanos que no los hai en esta gobernacion.

VELEZ CACHUPIN.

Testigo: CARLOS FERNANDEZ.

Testigo: JOSEPH MALDONADO.

YNFORME.

En cumplimto. de lo mandado por el Señor Dn. Thomas Velez Cachupin, govor. y capn. grad. de este reyno, por

su decreto de diez y seis del corriente Junio, que antecede, yo, Dn. Bartolome Fernandez, alee. mayor y caon. á grr. de los pueblos de la nacion Queres, pase á reconocer las tierras pedidas por los tres pueblos de Xemez, Zia y Sta. Ana, y los linderos que en su pedimto. expresan, y hallo que comprehenden de norte á sur, esto es, de bado de piedra, que es el lindero de los vecinos del rio Puerco, hasta la Bentana, como ocho leguas poco mas ó menos, y de oriente á poniente, esto es, desde el pueblo de Zia, que es el mas ymediato á las tierras pedidas hasta el rio Puerco, como seis leguas poco mas ó menos, en cuja distancia no se que entran tierras utiles para sembrar por ser los aguajes cortos y pocos, y solo son utiles para pastar ganados mayores y menores de los que abundan dhos. pueblos, sin que tengan las dhos. tres republicas otras tierras en que poder mantener sus ganados, y siendo cierto como lo es que ninguno de los sitados, linderos perjudican a vecino alguno aposeciondo, ni por aposecionar en tierras comprehendidas en ellos, lo que hasente por diligencia, qe. firme con dos testigos de assa. a falta de escribibamos, que no los hai en este reyno, de ninguna clase, villa de Santa Fee y Junio de mil setecientos sesenta y seis.

BARTOLMÉ FERNANDEZ.

Tte: JUAN MARIA ANTONIO RIVERA.

Testigo: PEDRO PADILLA.

AUTO DE MERCED.

En la villa de Santa Fee, en seis dias del mes de Agto. de mil setecientos sesenta y seis, yo, Dn. Thomas Velez Cachupin, govor. gral de este reyno del Nuevo Mexico, en atencion a lo pedido por los tres pueblos de Sta. Anna, Zia y Xemez, de la nacion Queres, y al el informe que hace su alee. mayor Dn. Bartolome Fernandez, como de ser terrenos que con sus ganados mayores y menores y cabaladas han poseido, y en lo actual abundan, sin tener otros

parajes a donde pastear, lo que los contenidos en su petición, con los cortos aguajes que se refieren en dho. ynfirme dije que les concedia y concedi en nombre de S. M. (q. D. G.), los referidos terrenos para el pasto de los ganados y caballadas de los otros tres pueblos, Santa Anna, Zia y Xemez, con los lideros de norte a sur, desde el paraje de la Bentana, hasta el lado de piedra del rio Puercio, lindero si mismo de los vecinos del lugar de Sn. Fernando, y Nra. Sra de la luz, y de oriente a poniente desde el pueblo de Zia, hasta el mismo rio de Puercio, orilla de la parte del oriente, quedando todo el valle del Ojo del Espiritu Santo comprendido en el sentro y linderos de esta merced, con la calidad y condicion, de que en este dho. valle se pueda y deba poner en caso necesario la cavallada del real presidio de Santa Fee por ser paraje en que a solido pastiarse, do modo que por los mendionados tres pueblos, no se ha de poner embaraso ni reclamar agravio, y para qe, considerandose en lo subsesivo los supra dhos. linderos por de los tres pueblos, lo posean con dro. lexitimo mediante esta real merced, sin que, por ningun vecino o vecinos españoles les sean perjudicados, yntroduciendo sus ganados suponiendo ser comunes los pastos, y mande a el alce mayor Dn. Bartolome Fernandez, pase y de posesion real a dhos. tres pueblos de esta merced y linderos contenidos, llevando consigo a las justicias y mayores de cada uno de ellos, asiendo constar la diligencia a continuacion de este mi auto de merced, qe, me debolvera para dar a cada pueblo el testimonio correspondiente de todo, y poner el original en el archivo de este gobierno a donde debe constar y hasi lo provei, concedi, mande y firme autuando con dos testigos de assa. a falta de es cribanos que de ninguna clase los hai en esta gobernacion.

THOMAS VELEZ CACHUPIN.

Testigo: CARLOS FERNANDEZ.

Testigo: DOMINGO LABADIA.

POSESION.

En cumplimto. de lo mandado por el Sor. Dn. Thomas Velez Cachupin, govor. y capn. gral. de este reyno del Nuevo Mexico., yo, Dn. Bartolome Fernandez, alce. mayor y capn. a grra., de los pueblos de la nacion Queres, pase a dhos. pueblos y en compania de los gobernadoresillos, casiques y demas justicias de los pueblos de Sta. Anna, Zia, y Xemez pase a las tierras pedidas por los naturales de dhas. tres republicas y mencionados por dho. señor govor. en nombre de S. M., como consta por la antecedente merced, y citando a los conlindantes qe. son los vecinos del puesto de Sn. Fernando del rio Puero y presente el Thnte. Juan Bapta. Montañio, Agustin Gállego y Tomas Gurule, les tome d ela mano a dhos. gobernadoresillos que lo son Cristoval Naspona y Cristoval Chiquiqui, Pedro Chite, casique, Sabastian Lazaro, Juan Antonio, capitanes de la guerra, Agustin, Tomas, Juan Domingo, y demas justicias y los pase por dhos. tierras, dieron voces, viva, (el rey nro. señors q. D. G.,) tiraron piedras y arrancaron sacate en señal de posesion, lá que les di y aprendieron quieta y pacificamente, sin contradicion alguna, bajo las condiciones expresados en la referida merced, y de los linderos en ellos señalados, que son de norte a sur, de la ventana, el vado de piedra y de oriente, a poniente desde el pueblo de Zia, a orillas del rio Puero, a la parte del oriente. Y para que así consta lo firme yo, dho. alce. mayor, con dos testigos de assa. autuando como juez receptor, a falta de iscribano, que no los hai en esta gobernacion, en este paraje del Ojo del Espiritu Santo, en veinte y ocho de Septiembre, de mil setecientos sesenta y seis años. Doy fee.

BARTOLOME FERNANDEZ.

Testigo: MIGL. TENORIO DE ALBA.

Testigo: PEDRO GARCIA.

Concuerta con su original que quede en el archivo de este bobno. donde, yo, Dn. Thomas Velez Cachupin, gobor. general de este reyno del Nuevo Mejico, lo mande sacar, va fielmente y correjido, y fueron presentes, los de mi asistencia con quienes artuo a falta de escribano, que no los ay en este gobno. En testimonio de verdad.

THOMAS VELEZ CACHUPIN.

Testigo: CARLOS FERNANDEZ.

Tto. : DOMO. LABADIA.

APPENDIX III.

*Opinion of Court of Private Land Claims, Murray, A. J.,
confirming Felipe Tafoya grant.*

In the Court of Private Land Claims, district of New
Mexico.

ROMAN A. BACA, petitioner,	} No. 67. Felipe Tafoya grant.
<i>v.</i> THE UNITED STATES, defendant.	

Mr. Justice MURRAY delivered the opinion of the
court:

The grant on which this suit is based was made to Felipe Tafoya, Diego Antonio Chaves, and Pedro Chaves, on the 20th day of June, 1767, by Pedro Fermin de Mendinueta, then governor and captain-general of the province of New Mexico. The several papers constituting the *expediente* of title are genuine, and executed by the proper officers. The testimony tends to show occupation of the lands with cattle, sheep, etc. The petitioner shows such an interest in the land granted as entitles him, under the provisions of the act of March 3rd, 1891, to ask this court to confirm the same.

The controversy between the claimant and the United States is as to the character of the grant and the quantity of land granted. It is claimed by the petitioner that the grant is by metes and bounds and a perfect one, vesting in the grantees an absolute and indefeasible title. It is insisted by the government's attorney that the grant

is by quantity and invested in the grantees nothing more than a right to use and occupy the land with their stock during the pleasure of the sovereign. That the legal title vested in the United States at the date of the treaty of Guadalupe Hidalgo, and that the petitioner has no interest in the land which this court can consider. These questions must be determined by the granting documents in evidence and the laws of Spain in force at the time.

Prior to December 3rd, 1766, one Felipe Tafoya, as attorney for Diego Antonio Chaves and Pedro Chaves, applied by petition to the then governor of the province of New Mexico for a grant of the land in controversy for the purpose of pasturing their stock upon it. On the 3rd of December, 1766, governor Cachupin made a grant in accordance with the prayer of the petition. The grant is as follows:

"If these parties have not had any land whereon to pasture their animals, they might have joined in the new settlement of San Miguere de Learedo and San Gabriel de las Nutrias (in which settlements there are the necessary public pasturing grounds) or have in like manner domiciliated themselves at San Fernando del Rio Puerco, where families not possessing the advantages of lands and pasture grounds were sought for settlement of that place. But these parties doubtless experienced fear, as the said places were frontier places and as they lacked the courage for their establishment, and they have registered the tract they mention for the pasture of their stock, because it is in the peaceful region of the Navajo country. They may occupy the same while the natives of the district do not object to their doing so and prevent them the use of their pasture ground, these parties to endeavor not to injure the said Apache Indians with their live stock or in person, but should rather endeavor, with the greatest love and kindness, to win them over and treat them well, so as to keep them in amity with us, and so that in

the course of time, and showing them good examples and Christian conduct, they may be brought to the holy Catholic faith.

“VELEZ CACHUPIN.”

It is quite clear from an examination of this grant that the grantees acquired no title to the lands, but a mere right to occupy it with their flocks during the pleasure of the natives of that district. Some time prior to June 15th, 1767, the same Felipe Tafoya, who presented the petition as attorney for Diego Antonio Chaves and Pedro Chaves in 1766, presented another petition to the then governor for the same land. The petition was on his own behalf, as well as for the said Diego Antonio and Pedro Chaves. The petition is as follows:

“His Excellency the governor and captain-general:

“I, Felipe Tafoya, a resident of this village, legitimate son of Antonio Tafoya, formerly ensign of this royal garrison and one of the soldiers who entered the country with Diego de Vargas at the time of its conquest, from which time he served his Majesty until the year one thousand seven hundred and forty-seven, when, being in active service as ensign, a misfortune befell him by which he utterly lost his eyesight, for which reason he left the royal service and entered the service of his Majesty, as soon as I was of sufficient age, at this royal garrison, in which I continued ten years and until, on account of bad health, I retired from it, without my father or I having asked a grant of one span of land; and having a large family, with a small capital in live stock without anywhere to pasture them, and desiring to increase the same for my own and the support of my children, heirs, and successors, I have associated myself with Diego Antonio Chaves and Pedro de Chaves, in whose name, and as attorney at law of this village, I presented myself before his Excellency, Tomas Velez Cachupin, governor and captain-

general of this Province, your Excellency's predecessor, praying a tract of land unappropriated and unsettled, upon which petition his Excellency was pleased to grant that they, the said Chaves, might pasture their stock upon the land prayed for, under the condition that they were not to injure the Navajo Apaches, all of which will appear to your Excellency from the accompanying petition and decree which I annex, and no complaint whatever having been made on the part of the said Apaches, but, on the contrary, two families having voluntarily joined them, and who are supported by kind treatment, and the land so applied for being known to be unfit for cultivation and fit only for pasture land, on which account the said Apaches have not made, nor will make, any complaint whatever, as is shown by the past. In view of all this I ask and pray that your Excellency be pleased to make to us three a grant in the name of his Majesty (God preserve him) to the tract mentioned in the petitions accompanying, assigning to us as boundaries, on the east the base of a *mesa* facing the land of Salvador Jaramillo, on the west some small white *mesas*, on the north two small springs of water at the point of the said *mesa*, and on the south a timbered hill, which boundaries embrace about one league and a half on each course. And that your Excellency may be satisfied that neither the said Apaches nor any other person whatever would be injured by the grant we ask, I request your Excellency, should you deem it proper to do so, to consult with the chief *alcalde*, Bartolomé Fernandez, who is sufficiently acquainted with the lands thereaway, from having frequently travelled over and examined them under appointment conferred on him for that purpose. In consideration of all which, I ask and pray that your Excellency be pleased to cause to be done as I have requested: whereby we shall receive favor and justice, &c.

FELIPE TAFOLA."

On the 15th day of June, 1767, governor Mendinueta made the following order, referring the petition to Bartolomé Fernandez, chief *alcalde* :

“SANTA FÉ, June 15, 1767.

“The chief *alcalde*, Bartolomé Fernandez, will report to me, at foot of this decree, whether the grant prayed for by these parties would injure the Apaches of the Navajo country or any other individual of the inhabitants of the province, and whether the boundaries mentioned embrace the distance given: also, whether the land applied for is suitable for cultivation, and whether the Navajo Apaches have planted or now plant upon the same; all of which he will do in conformity with custom and in accordance with his knowledge of the tract.

“MENDINUETA.”

On the 16th day of June, 1767, the *alcalde* made to the governor the following report :

“To his Excellency the governor and captain-general :

“In compliance with what your Excellency commanded of me in your foregoing decree I state that the land applied for by the petitioners I have seen and am acquainted with it, and I do not understand that the granting of the same would be prejudicial to the Apaches of the Navajo country, inasmuch as I have never observed that they, the said Apaches, have lived upon the land permanently, and much less would be prejudicial to the people of this province. The boundary proposed on the western side is to be doubtful, as upon that side are numerous ‘small white *mesas*,’ on which account I can not decide upon the distance the parties suppose of one league and a half, and although I remember the boundary they propose on the east, and those from south to north, it appears that

there must be somewhat more than the league and a half. And in regard to whether the land is fit for cultivation, I state that by damming the water a little there a small field can be irrigated, and that although it is a valley and planting may be done therein, it is with the risk of having to depend upon rain, owing to there being no other water for irrigation. And in regard to whether the Navajo Apaches have planted or now plant upon the land applied for, I state that I have seen in a branch of the little valleys scattered here and there a few cornstalks, but I have never observed that the Apaches lived near these small patches of corn; but they mostly make their huts, owing to the dread of the Utes, distant and on the highest and roughest parts of the *mesas*. The foregoing is all that I can state to your Excellency, according to the best of my understanding. Your Excellency will, therefore, act in the matter as to you may seem most proper.

"Santa Fé, June 16, one thousand seven hundred and sixty-seven.

"Erased: 'That I have.' Not valid.

"BARTOLOMÉ FERNANDEZ."

On the 20th day of June, 1767, the governor made the grant in controversy.

From an examination of all the documents in the case, we are of the opinion that the grant of June 20th, 1767, to Felipe Tafoya, Diego Antonio Chaves, and Pedro Chaves is a grant of the land, with the conditions prescribed, and not a mere right to the use and occupation of the same for the purpose of pasturing stock. We know of no reason why the Spanish governors of New Mexico should not have made a perfect grant to land which could only be used for pasturage. The legal title to *all* the public land was in the crown, with full power of disposition. The governor of the province of New

Mexico at the date of this grant represented the King in the matter of granting land, and possessed full power and authority to vest the petitioners with the legal title, or with the right to use the same for the purpose of pasturing their stock. It is quite clear that the object in presenting the second petition was to secure the land asked for and not a mere right of pasturage. Two of the petitioners were in the actual possession of the land under the grant from governor Cachupin, which grant gave them the right to the use and occupation of it for the purpose of pasturing their stock. It was known to them that the land was not suitable for cultivation; so it is hardly fair to assume that they were asking the governor to grant them a right which they already possessed under the former grant.

Felipe Tafoya in his second petition refers to the fact that Diego Antonio and Pedro Chaves have been granted the right to pasture their stock on the land, and that it is unfit for cultivation and fit only for pasture land. The governor knew that Tafoya was asking for something more than had been granted to Diego Antonio and Pedro Chaves under the former grant. After a careful investigation, and with the petition and report of the *alcalde* before him, he decreed as follows:

"I did, and I do, grant to the three parties mentioned, Felipe Tafoya, Diego Antonio Chaves, and Pedro Chaves, in the name of his Majesty (God preserve him), and at the place they request it, one league by courses, leaving it to their selection the designation of the center point, from which will be measured off 2,500 Castillian *varas* each way, and if the measure can not be made in a square form, and it will be necessary for it to be oblong or triangular, its circumference shall nevertheless be twenty thousand Castillian *varas*; which concession and grant I do make to them, their children and successors, under the conditions that they shall settle the land with their

stock for four years, required by law, to enable them to acquire legal title and dominion, but they shall not thereafter sell the same to any ecclesiastical person or monastery, under penalty of defeasance." * * *

The Spanish words in the granting clause are: "*Para adquirir lejítimo derecho de propiedad y señorio.*" "In order to acquire legitimate right of property and dominion." The Spanish words "*propiedad y señorio*" are equivalent to the English words "fee simple." The word "*propiedad*" means the right to the property, in contradistinction to a use or usufruct, exclusive right to a thing, landed estate or property, etc. (See Nueva Diccionario, p. 502, Escereche, vol. 1, p. 642.) The word "*señorio*" means "dominion," right and power to dispose of a thing. "The territory belonging to the Lord, of which territory he is the owner." (See Escereche, vol. 2, p. 839.)

The governor in the granting decree construed the law of Spain in relation to four years' occupation of land by a grantee in order to perfect title to the land granted. It appearing to him that the land he was granting was unfit for cultivation and fit only for pasturage, he directed that the grantees should settle the land with *their stock* for four years prescribed by law, to enable them to acquire the right of property and dominion. Settling the land with their stock, being the only occupation its character and location would admit of, was deemed a compliance with the law requiring actual occupation by a grantee for four years in order to vest him with a complete title. This holding of governor Mendinueta is certainly a common-sense view of the law on that subject, and we think it sound.

It is, however, insisted by the United States attorney that the grant in this case is exactly like the one made to the Indian *pueblos* of Zia, Santa Ana, and Jemez, and that this court at a former term decided that the grant only vested in the grantees an usufructuary right, and that

the *jus disponendi* remained in the sovereign. This point having been pressed by the government's attorney, we have deemed it our duty to reexamine the grant in the case referred to, as well as all the facts, and we are still of the opinion that the decision of the court in that case is correct. Any mistake or uncertainty as to the intention of the granting officer in either case can only arise out of a want of a proper understanding of the meaning of the Spanish words used. The grant to the Indian *pueblos* was based on a petition and report of an *alcalde* to the effect that said Indians had held the land for their live stock, without having any other place in which to pasture them, together with the watering places mentioned in said report. The governor grants the "aforesaid land for pasturing the stock and horses of the aforesaid *pueblos*," etc., etc., with the condition and stipulation that in case of necessity the horses of the royal garrison of Santa Fé may and shall be kept in said valley, the same being a place where they have been accustomed to graze; wherefore the aforementioned three *pueblos* are to place no obstruction in the way, nor claims for damages therefor."

The granting clause of the decree is as follows: "They will hold the same with legitimate right of possession under this royal grant, so they be not molested by any Spanish citizen taking their stock thereupon, deeming the pasturage to be common." The Spanish words in the decree of the governor which conferred the right to legitimate possession are: "*Para que lo posean con derecho legítimo*." The proper rendering of these words into English leaves no doubt as to what rights were intended to be conferred upon the grantees, and they were nothing more than the "right to hold the same, with legitimate right of possession." "*Posean con derecho legítimo*" means "possession with right legitimate." Governor Cuchupin, who made this grant, was evidently a man of ability as well as of affairs, and understood the meaning of words used by him in making this grant.

If it had been his intention to have conferred on the Indian *pueblos* anything more than a usufructuary right he would have used the proper words to have conveyed such rights. If he had intended to convey the fee in the land, as was done in the grant to Felipe Tafoya, Diego Antonio Chaves, and Pedro Chaves, he would have used the words "*propiedad y señorío*," as was done by his successor, Mendinueta, or some other words clearly manifesting his intention to pass the legal title.

We have shown the words "*propiedad y señorío*" were intended to and did vest in the grantee the absolute right and title to the land, subject to the conditions prescribed. One may have a legitimate right to possession of land without title, or a valid legal title without possession. (Escriche, vol. 1, p. 642.)

It is quite clear that the *pueblos* under their grant took nothing more than the right to use and occupy the land, the *jus disponendi* remaining in the sovereign. The decree recognizes the fact that all Spanish citizens had a right to pasture their stock on the public lands, and the effect of the grant to the *pueblos* was to prevent Spanish citizens from taking their stock upon the land, "deeming the pasturage to be common." In other words, the grant gave the three *pueblos* the exclusive right to pasture their stock on the land granted, with the exception mentioned. It is evident that this construction was put upon the grant by the officers of the Spanish government, as it appeared in that case that subsequent to the grant to the *pueblos* a large portion of the land had been granted by the proper officers to other parties.

Whilst we are satisfied that the grant to Felipe Tafoya, Diego Antonio and Pedro Chaves vested in them the legal title to the land subject to the conditions prescribed, we are also of the opinion that it is a grant by quantity and not by metes and bounds. The petition set out the boundaries and prayed for a grant of one and a half leagues. The *alcalde*, in his report to the governor,

gives it as his opinion that there are within the boundaries called for in the petition something more than a league and a half. With the petition and the report of the *alcalde* before him, the governor granted only one league by courses, leaving the petitioners to select within the boundaries set out by them the league so granted. There is no ambiguity in the grant. The intention of the governor is clear and explicit. He granted 20,000 Castillian *varas*. If it could not be measured in a square form, and it was necessary to be oblong or triangular, it was nevertheless to be 20,000 *varas*. It is true that if not in a square form its circumference was to be 20,000 *varas*, which would contain an area of something less than one league if measured either oblong or triangular in form. But the grant was for "one league by courses, or 2,500 *varas* each way from a center point, to be selected by the grantees." The *alcalde* measured from north to south 13,700 *varas*, and from east to west 6,300 *varas*, which he says "made the 20,000 *varas* granted to the parties." It is true that 13,700 *varas* and 6,300 *varas* added together make 20,000 *varas*, but as there are but two lines measured it amounted to nothing. But if he meant to say that the two north and south lines were 13,700 *varas* each and the two east and west lines were 6,300 *varas* each, so as to close the lines, the circumference would be forty thousand *varas* and the area three leagues and $\frac{45}{100}$. The area embraced within the natural object set out in the act of possession, according to a survey made by the surveyor general of New Mexico, is something more than five leagues. Whether the calculation and measurement made by the *alcalde* was done by mistake or design it is not necessary for us to determine. The fact remains that only one square league of 20,000 Castillian *varas* was granted. It is insisted by counsel that the action of the *alcalde* is a judicial determination of the quantity, extent, and boundaries of the land granted. And to sustain this contention the court is

referred to the case of *United States v. Pico* (5 Wall., 536), *Van Rynegon v. Bolton* (95 U. S., p. 33), and *Graham v. United States* (4 Wall., 259).

In the case of *Graham v. The United States* the grant had been confirmed by the board of commissioners according to the metes and bounds fixed by the *alcaldé* in the act of juridical possession. The surveyor-general of California did not follow the measurement contained in the record of juridical possession, which record and map had been adopted by the board of commissioners and referred to in the decree of confirmation for a particular description. The district court set aside and ordered a new survey which should correspond with the measurement. Mr. Justice Field, in delivering the opinion of the court, said: "The record of a proceeding of this nature must necessarily control the action of the officers of the United States in surveying land claimed under *confirmed* Mexican grants." In other words, the court held that the surveyor-general should make his survey in accordance with the boundaries fixed by the decree of confirmation. In the case of *The United States v. Pico*, the rancho of San Margarita and San Onafre were granted in 1841. The grantees were put in possession in 1842. The boundaries were set out in the grant and act of possession. In 1845 the concession was approved by the departmental assembly. The resolution of approval, after designating the tract ceded, adds: "In extent twelve square leagues." These words were supposed to create a limitation upon the quantity granted. Mr. Justice Field said: "It is evident, however, that the words are not used for any such purpose, but merely indicate a conjectural estimate of the quantity. The concession of the governor, with its *specific* description, is referred to in the proceedings of the assembly, and is stated to have been made in conformity with the requirements of law. No objection is suggested to the boundaries given, nor is an intimation made of any intention to exclude from the cession any portion of the

land they embrace or to restrict the concession in any particular." It is further held by the court "that where there is doubt as to the intention of a governor to cede all the land contained within the boundaries designated by him it would be removed by juridical possession delivered to the grantees. This proceeding involved an ascertainment and settlement of the boundaries of the lands granted by the appropriate officers of the government, specially designated for that purpose, and has all the force and efficacy of a judicial determination. It bound the former government, and it is equally binding upon the officers of our government."

The case of *Van Ryeagan v. Bolton* was another case where the surveyor-general of California disregarded the decree of confirmation and made the survey according to his own notion as to the quantity of land granted. In speaking of the act of juridical possession Judge Field said: "*Ordinarily* the boundaries thus established would be accepted as conclusive by our government; unless there is something in the *decree of confirmation otherwise limiting the extent* or the form of the tract, they should control the officers of the United States in making their surveys. It was so held by this court in *Graham v. United States* (4th Wall., 259) and in *Pico v. United States* (5 Id., 536)." It has never been held by the Supreme Court of the United States that an *alcalde* had the power to disregard the express directions of the governor in granting a decree and fix the boundaries and determine the quantity granted to suit his own notion of what ought to have been granted. It was only in cases where there were doubts as to the boundaries or quantity granted, from an examination of the granting documents, that an *alcalde* had the power to determine the quantity or boundaries in the act of juridical possession. It was necessary under the Mexican system that *alcaldes* should possess such power. The act of juridical possession was the final act which vested the legal title in the grantee. His acts could not be revised or

changed by any other official. The procedure under the Mexican system necessary to vest a grantee with a perfect title is fully set out in the opinion of the Supreme Court of the United States in the case of *Van Rynegan v. Bolton*, *supra*.

Aleables, under the Spanish law, had nothing whatever to do with the disposition of public lands by virtue of their office. In putting grantees in possession of land they acted as the agent of the governor, and their acts were subject to approval or disapproval by him; as in all other cases of agency, they had only such powers as were conferred upon them by their principal. We do not think the doctrine of prescription has any application to the facts of this case. The grantees could not claim in good faith or by just title more than the league granted. To constitute prescription there must be both good faith and just title. (See 2nd White's Recap., p. 82.)

The grant will be confirmed for one league in the name of the grantees their heirs and assigns. The petitioner will be allowed ninety (90) days to elect where he will have said league located within the boundaries set out in the act of possession, either in a square, oblong, or triangular form; and on failure to so elect, a square league of 20,000 Castillian *varas* will be surveyed for him, beginning at the base of the big *mesa* mentioned in said report of the *aleable* as the east boundary, and run west 5,000 *varas*; then run from the middle of said line (2,500 *varas* from beginning point) 2,500 *varas* north and south, which will make the 20,000 *varas*. Granted.

The intervening petition of the Atlantic and Pacific Railroad Co. will be dismissed, as it does not appear that it has any interest in the land in controversy.

WILLIAM W. MURRAY,

Associate Justice.

SANTA FÉ, NEW MEXICO,

February 6, 1895.

Statement of the Case.

ZIA, Pueblo of *v.* UNITED STATES.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

No. 5. Argued October 12, 1897. — Decided November 15, 1897.

An officer of the Pueblo of Zia and an officer of the Pueblos of Santa Aña and Jemez, in 1766, petitioned the Spanish governor and captain general, setting forth "that they, from their foundation, have considered as their pasture ground, in the vicinity of their said pueblos, a valley commonly called the Holy Ghost Spring, and that in some urgent cases, the same as is known, is used as a pasture ground for the horses of this royal garrison, and the said parties being aware that the said valley has had, in its vicinity, some applicants to acquire the same by grant, which will cause them very great injury, as they have considerable cattle, sheep, goats and horses for the royal service, and not having any other place in which to pasture them, particularly the people of the Pueblo of Zia, the greater part of whose fields are upland, and some of them in the glens of said valley, adjoining their said pueblo," and asking him to "be pleased to declare said valley to be the legitimate pasture grounds and pastures of the pueblos, directing that the boundaries thereof be designated to them, that is, on the east, the pueblos aforesaid, on the west, the summits of the Puerco River, on the north, a place called the Ventana, where some Navajo Apaches reside, and on the south, the lands of the citizen settlers of said Puerco River." On receipt of this petition the captain general ordered an examination to be made, and, upon the coming in of a favorable report, ordered the alcalde to give royal possession of the grant to the petitioners and the boundaries therein set forth. *Held*, that the language used in the documents indicated nothing more than a right to pasture their cattle upon the lands in question; that the grant did not vest the title to the lands in the petitioners, but was a mere license to use them for pasturage, which license, if not revoked by subsequent grants, was revoked by the treaty of Guadalupe Hidalgo, ceding the entire territory to the United States; and that the title to the land was not one "lawfully and regularly derived from the government of Spain," nor "one that if not then complete and perfect at the date of the acquisition of the territory by the United States the claimant had a lawful right to make perfect, had the territory not been acquired by the United States," as provided for in the act of March 3, 1891, c. 539, creating the Court of Private Land Claims.

This was a petition by the Pueblos of Zia, Santa Aña and Jemez for the confirmation of what is known as the Ojo del Espiritu Santo grant, containing about 382,849 acres.

The *testimonio*, or official copy of the proceedings, opens

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with the following petition to the governor and captain general, presented in 1766, by Felipe Tafoya, as the agent of these pueblos:

"His excellency the governor and captain general:

"I, Felipe Tafoya, lawyer of this town of Santa Fé, appear before your excellency in full legal form, for and in the name of Cristoval, Indian governor of the Pueblo of Zia, and Thomas, chief war captain of said pueblo, who come under appointment from their casique, and of the other inhabitants of their Republic, and, sir, in the name of the aforementioned, and of the community of the Pueblos of Santa Aña and of Jemez, do state that they, from their foundation, have considered as their pasture ground, in the vicinity of their said pueblos, a valley commonly called the Holy Ghost Spring, and that in some urgent cases, the same as is known, is used as a pasture ground for the horses of this royal garrison, and the said parties being aware that the said valley has had, in its vicinity, some applicants to acquire the same by grant, which will cause them very great injury, as they have considerable cattle, sheep, goats and horses for the royal service, and not having any other place in which to pasture them, particularly the people of the Pueblo of Zia, the greater part of whose fields are upland, and some of them in the glens of said valley, adjoining their said pueblo. In consideration of all of which, I ask and pray that your excellency, in the name of His Majesty, (whom may God preserve,) be pleased to declare said valley to be the legitimate pasture grounds and pastures of the pueblos, directing that the boundaries thereof be designated to them, that is, on the east, the pueblos aforesaid, on the west, the summits of the Puerco River, on the north, a place called the Ventana, where some Navajo Apaches reside, and on the south, the lands of the citizen settlers of said Puerco River, and, should your excellency order to be done as I have requested, the said parties, my clients, will receive grace with the justice which I ask, and declare in their name that this is not in dissimulation, and so forth.

"FELIPE TAFOYA."

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Upon the receipt of this petition and on June 16, 1766, Velez Cachupin, governor and captain general, made an order commissioning the chief alcalde of said pueblos, Bartolomé Fernandez, "to the end that, having examined the boundaries which they mentioned as of the Holy Ghost Spring, where they state they pasture their stock and horses, he reports to me the leagues the same may embrace from north to south and from east to west, and whether the aforesaid three pueblos have the cattle, sheep, goats and horses proportional to the boundaries asked for their grazing, and also whether or not any citizen or citizens are damaged by said boundaries under any prior valid grant and possession held by them, which the said chief alcalde will perform with all possible veracity."

Fernandez reported that he proceeded to examine the lands and their boundaries, and after establishing the quantity, found that they were "only suitable for pasturing live stock, which is abundant at said pueblos, though the said three republics have no other lands on which to sustain their stock, and it being, as it is true, that none of the aforementioned boundaries will injure any one holding or to hold possession of lands within the same, which proceedings I placed on record," etc.

Upon this report the captain general made the following decree:

"In the town of Santa Fé, on the sixth day of the month of August, one thousand seven hundred and sixty-six, I, Thomas Velez Cachupin, governor general of this kingdom of New Mexico, in view of what is petitioned for by the three Pueblos of Santa Aña, Zia and Jemez, of the Queres nation, and of the report which their chief alcalde, Bartolomé Fernandez, makes, that they have held said lands for their live stock, which at present is abundant, without having any other places in which to pasture them, except those referred to in their petition, together with the small watering places mentioned in said report, declare that I would grant, and I did grant, in the name of His Majesty (God preserve him), the

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aforesaid lands for pasturing the stock and horses of the aforesaid three Pueblos of Santa Aña, Zia and Jemez, with the boundaries, from north to south, from the place Ventana to the stone ford of the Puerco River, the boundaries also of the citizens of the place San Fernando of Nuestra Señora de la Luz; and from east to west, from the Pueblo of Zia to the said Puerco River, the eastern edge, the whole of the valley of the Holy Ghost Spring being embraced within the centre and within the boundaries of this grant, with the condition and stipulation: that in case of necessity the horses of this royal garrison of Santa Fé may, and shall be, kept in said valley, the same being a place where they have been accustomed to graze; wherefore the aforementioned three pueblos are to place no obstacle in the way, nor claim damage therefor; and the aforementioned boundaries being for the future considered those of the aforementioned three pueblos, they will hold the same with legitimate title under this royal grant, so that they be not molested by any Spanish citizen or citizens, taking their stock thereupon, deeming the pasturage to be common. And I direct the chief alcalde, Bartolomé Fernandez, to go and give to the aforementioned three pueblos royal possession of this grant, and the boundaries therein set forth, taking with him the justices and seniors of each one of them, and placing his proceedings on record, following this my granting decree, which he will return to me, in order to furnish to each pueblo the proper testimonio of the whole, and deposit the original in the archives of this government, where it shall remain.

"And I so provided, granted, ordered and signed, acting with two attending witnesses in the absence of notaries, there being none of any kind in this jurisdiction.

"THOMAS VELEZ CACHUPIN.

"Witness: CARLOS FERNANDEZ.

"Witness: DOMINGO SABADIA."

In compliance with this decree of the governor and captain general, Bartolomé Fernandez, the alcalde, made report to the governor that he proceeded to the aforementioned pueblos,

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and, in company with the governors, casiques and other authorities, proceeded to the lands asked for by the natives of the said three republics, and summoning the contiguous land holders, took by the hand the aforesaid governors and the magistrates, "and conducted them over said land; and they shouted 'Long life to the King, our sovereign, whom may God preserve,' and they cast stones, and pulled up grass, in sign of possession, which I gave them, and which they received quietly and peaceably, without any opposition whatever, under the conditions mentioned in the aforesaid grant," etc.

The claim was presented to the surveyor general under the law of July 22, 1854, and through the Secretary of the Interior reported to Congress for confirmation, but no action was ever taken. The petitioners also produced evidence tending to show that since the date of the grant they have been continuously and openly in possession of the property, pasturing their cattle upon it and cultivating certain portions, under a claim of exclusive right thereto by virtue of the grant; that they are now in the open and notorious occupation of the same as the owners in fee, except a portion of it which may be in conflict with a certain grant called the Santissima Trinidad Galvana Ignacio Sanchez Veraga tract, in regard to which they admit they have released the same unto the claimants thereof. The continuity and exclusiveness of this possession were denied by the witnesses produced by the Government.

In defence it was shown by the Government that three subsequent grants were made, one in 1815 to Luis Maria Cabeza de Baca, known also as the Ojo del Espiritu Santo grant; another in 1786, known as the San Isidro grant, and another made 1798, known as the Cañon de San Diego grant, in connection with which parol evidence was admitted to show a conflict between these grants and that of the petitioners to a large, if not to the entire, extent of their grant.

Upon this state of facts the Court of Private Land Claims made a decree rejecting the grant, and dismissing the petition of petitioners upon the ground that the grant was not in fee, but a license to pasture. From this decree the petitioners appealed to this court.

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Mr. Henry M. Earle for appellants.

Mr. Matthew G. Reynolds for appellees. *Mr. Solicitor General* was on his brief.

MR. JUSTICE BROWN, after stating the case, delivered the opinion of the court.

The main question in this case is whether the language of the documents, which make up the *testimonio*, indicates anything more than the grant of a right to these pueblos to pasture their cattle upon the lands in question—a right somewhat akin to the right of common under the English law, and one which appears to have been frequently granted under the Spanish law. *United States v. Huertas*, 8 Pet. 475; *United States v. Davenport's Heirs*, 15 How. 1.

The words of the several documents set forth in the *testimonio* certainly favor this interpretation: Thus, in the petition, there is no application for a grant of vacant land for cultivation and pasturage, as is usual in this class of cases, but a statement that the pueblos “have considered as their pasture ground in the vicinity of their pueblos, a valley commonly called the Holy Ghost Spring,” (which, it seems, had been used in some cases as the pasture ground for the horses of the royal garrison,) and that some applicants were desirous of acquiring the same by public grant, “which will cause them very great injury, as they have considerable cattle, sheep, goats and horses for the royal service,” and have no other place in which to pasture them. There was no claim of a grant of the lands, such as the other applicants were seeking to acquire, but a request to have them *considered as their pasture ground*, and as the pasture ground for the horses of the royal garrison. The prayer bears out this construction of the statement of the petition. It asks, not for a grant of the land, but that his excellency will “be pleased to declare said valley to be the legitimate pasture grounds and pastures of the pueblos,” directing a designation of their boundaries, etc.

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The order of the captain general upon this petition and the report of the chief alcalde are addressed only to the ascertainment of the boundaries, and to the fact whether there was any other prior grantee in possession, and throw but little light upon the granting act.

The final grant or decree, however, states that the captain general granted the aforesaid lands "for pasturing the stock and horses of the aforesaid three pueblos," designating the boundaries, and with the stipulation that in case of necessity the horses of the royal garrison of Santa Fé might be kept in the valley where they had been accustomed to graze, and decreed that the aforementioned three pueblos "will hold the same, with legitimate title, under this royal grant, so that they be not molested by any Spanish citizen or citizens, taking their stock thereupon, deeming the pasturage to be common." The alcalde was further directed to give royal possession of the grant which he certifies in the act of possession that he did by taking by the hand the governors and war captains of the pueblos with their magistrates, and conducting them over the land, and making a livery of seizin by shouting "Long life to the King, our sovereign, (whom may God preserve,)" and casting stones and pulling up grass in sign of possession, "which I gave them and which they received quietly and peaceably without any opposition whatever, under the conditions mentioned in the aforesaid grant," and, subsequently, attesting these formalities with witnesses.

There is nothing in any of these instruments to indicate that the pueblos desired, or that the governor intended to grant anything beyond a common, whereon the inhabitants of the pueblos might pasture their stock in conformity with ancient usage. When it is considered that the valley was already used as a pasture ground for the horses of the royal garrison, it is to be inferred that the rights of these pueblos were practically the same as those of the royal garrison, and were not intended to involve a conveyance of a fee of the land. It is true that by the common law of England, livery of seizin was only necessary to be made upon the granting of an estate of freehold, either of inheritance or for life, (2 Bl.

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Com. 314;) but, under Spanish law, it seems to have been a feature commonly connected with the delivery of possession of the land, though to what extent is somewhat uncertain.

The granting clause is not in the usual form of a grant of vacant lands to the grantee for cultivation and pasturage upon condition of actual possession for a number of years. Nor are there any words indicating an intention to pass a fee simple, such as found in some of the Spanish grants, *para adquirir l g timo derecho de propiedad y se or o*, "in order to acquire legitimate right of property and dominion." These words, *propiedad y se or o*, carry the idea of complete ownership, and seem to be practically the same as the words "fee simple" under the common law.

Upon the contrary, the grant in question provides that the grantees "shall hold the same with legitimate right" of possession (*para que lo posean con derecho l g timo*) "under this royal grant, so that they be not molested by any Spanish citizen taking their stock thereon, deeming the pasture to be common." It would seem to have been the intention of the governor by these words to vest the pueblos simply with the right to the use of the lands without intending to estop himself, or his successors, from making a subsequent disposition of the same by a grant in fee. This construction is also borne out by the fact that within a few years thereafter a grant was made of the entire tract to other parties. As remarked in the opinion of the court below, "it seems quite unreasonable to suppose that, if this area in controversy had been granted as an estate in fee to the land, the same granting authority would have deliberately granted a portion of the same land to a third party only twelve years after the former grant, repeat a like act in 1815 and afterwards, and that, too, of land situate near the capital, grazed upon by the royal horses of the capital garrison, and the local alcalde directed in every case to report officially whether the land proposed to be granted was unoccupied, or that the grant would be to the injury of third parties. This grant was prayed solely as a pasturage right; it seems to have been granted for that purpose alone, and it appears that the governor afterwards treated it as such, and disposed

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of the paramount title to a large part of the land upon the same view."

In the absence of direct testimony it is somewhat difficult to ascertain with precision the laws of Spain with respect to grants of pueblo lands; but in 2 White's New Recopilacion, 254, it is stated by Nicholas Garrido, apparently acting for the Duke of Alagon, in a communication addressed to the governor of Florida, that "the concession of a great extent of land for the rearing and pasture of cattle, constitutes no more than the usufruct of it, for the time agreed upon, but the grantee has not, nor never had, the most remote right to solicit the proprietorship, for there is no law or regulation upon which to found it, and consequently the land does not go out of the class of public lands, since it is the same as if it were held on rent. Those who have obtained those concessions as recompense for services are in the same class with the others, and can allege no other right, than what is extended to all those who have suffered losses, and faithfully followed the cause of his majesty." From the correspondence, of which this opinion was a part, and which was considered by this court in *United States v. Clarke*, 8 Pet. 436, 459, it would seem that there was a recognition by the governor and civil authorities of Florida of a distinction between absolute grants of land and "allotments of land made for raising cattle, which may not have titles of proprietorship," (2 White, 252,) the latter of which did not vest in the grantee the ownership of the lands. Certainly if a grant in these terms were made in a State in which the common law prevails, it would be treated simply as a license to pasture, terminable at the will of either party. Such information as we are able to obtain regarding the law of Spain favors a like interpretation of this grant.

The evidence of possession in this case was perfectly consistent with the grant, which on its face vested the pueblos with such possession, and besides, the testimony was of such a vague and contradictory character as to throw but little light upon the nature of the occupation.

The case of *United States v. Huertas*, 8 Pet. 475, relied upon

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by the petitioners, seems rather to bear against them. It is said by Chief Justice Marshall, in his brief opinion, that the governor in his decree making the concession states his own knowledge of the facts set forth in the petition, namely, the many and great services rendered to the government in an insurrection. He grants the ten thousand acres with the precise condition to use the same for the purpose of raising cattle, "without having the faculty of alienating the said tract without the knowledge of this government"; but, he adds, that on the 20th of July, 1816, three years after the concession, Governor Coppinger granted a complete title to this land, reciting the decree made by Governor Kindelan, and the boundaries of the land. It was this second grant which evidently fixed the title of the grantee, notwithstanding the limitations of the prior grant.

Upon the whole, we are of opinion that the court below was correct in holding that the grant in question did not vest the title to the land in the petitioners, but was a mere license to use them for pasturage, and that such license, if not revoked by the subsequent grants, was revoked by the treaty of Guadalupe Hidalgo, ceding this entire territory to the United States; *Wallis v. Harrison*, 4 M. & W. 538; *Cook v. Sterns*, 11 Mass. 533; *Harris v. Gillingham*, 6 N. H. 9; *Cowles v. Kidder*, 24 N. H. 364, 379; *Blaisdell v. Portsmouth, Great Falls &c. Railroad*, 51 N. H. 483; *Coleman v. Foster*, 1 Hurl. & Norm. 37; *S. C.* 37 E. L. & E. 489; *Prince v. Case*, 10 Connecticut, 375; and that in the language of § 13 of the act of March 3, 1891, c. 539, 26 Stat. 854, creating the Court of Private Land Claims, the title to the land in question was not one "lawfully and regularly derived from the government of Spain," or "one that if not then complete and perfect at the date of the acquisition of the territory by the United States, the claimant had a lawful right to make perfect, had the territory not been acquired by the United States."

The decree of the court below is therefore

Affirmed.